THE ROLE OF TRADE UNION IN VIETNAM IN PROTECTING WORKERS' RIGHTS

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Thesis
Entitled

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Trinh Khanh Ly

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ABSTRACT

This research identifies the role of Vietnam Trade Unions in protecting workers' rights, especially for those who are working in the private sector. The thesis analyzes Trade Union workers' rights in the context of economic globalization. The study the used a qualitative methodology of in-depth interviews of two targeted groups: union officials and workers, alongside some textual analysis and non-participatory observation methodology. The fieldwork was mostly conducted in Hanoi.

Major findings are that although workers' rights are affirmed in the laws and policies of Vietnam, and Vietnamese Trade Unions are considered to be an important actor in protecting workers' rights under international labor standards, such commitments have been under implemented in practice, especially in private sectors where violations are more prevalent. Policies of the State to encourage the Foreign Direct Investment (FDI) of Transnational Corporations (TNCs) in Vietnam have not made much progress in terms of promoting workers' rights, despite the increasing amount of FDI. The thesis details threats to workers rights: uncertain job security; an increasing division in the workforce evidenced in widening gaps between highly skilled workers and low skilled workers; low wages not increasing at the same rate as the rapid rising price index in urban areas; poor housing; overloaded working hours in poor working conditions; limited or weak collective agreements; obstacles to the right strike; weak enforcement of labor laws; weak monitoring of labor inspectors; poor professional capacity of the labour officials; and finally corruption, which is a serious problems in Vietnam are a major causes of human rights of the Vietnamese workers in private sector.

Protecting workers' rights, especially rights of the workers in the private sector is the major task of Vietnam Trade Union in the context of a globalized Vietnam. The Vietnamese Trade Union's response to the shift of workforce in Vietnam from public sector to private sectors, and Vietnam's economic integration should be to maintain international labor standards. However, the role of Vietnam Trade Union at all levels in response to workers' rights, especially in private sectors remains weak in terms of both limited representation and ineffective activities.

KEY WORDS: VIETNAMESE TRADE UNION / WORKERS' RIGHTS/
ECONOMIC GLOBALIZATION / VIETNAM PRIVATE SECTOR/
HUMAN RIGHTS

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CONTENTS

		Page
ACKNOWLEDGEMENTS		iv
ABSTRACT		v
LIST OF ABBREVIATIONS		vii
LIST OF TABLES		ix
LIST OF FIGURES		x
CHAPTER		
1	**INTRODUCTION**	1
	Context of the Research	1
	Statement of Research Problem	6
	Objectives of Research	9
	Key Research Questions	9
	Research Scope	10
	Significance of the Research	10
	Literature Review	10
	Organization of the Research	20
2	**RESEARCH METHODOLOGY**	21
	Selection of Study Areas	21
	Tools for Data Collection	23
	Sample Size	24
	Provisions for Trustworthiness	26
	Data Analysis Procedure	27
	Limitations	27
	Ethical Consideration	28

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CONTENTS (cont.)

		Page
3	**IMPACT OF ECONOMIC GLOBALIZATION ON WORKERS' RIGHTS AND TRADE UNIONS**	30
	General Concepts on Impact of Economic Globalization on Workers' Rights and Trade Unions	30
	Workers' Rights and Trade Unions in Vietnam	38
4	**THE ROLE OF TRADE UNION IN VIETNAM IN PROTECTING WORKERS' RIGHTS**	68
	The Right to Work	68
	The Right to a Decent Living	71
	Rest, Leisure and Working Hours	80
	The Right to Safe and healthy working conditions	87
	The Right to Organize and Bargain Collectively	94
	The Right to Strike	100
5	**CONCLUSION AND RECOMMENDATIONS**	105
BIBLIOGRAPHY		109
APPENDIX		118
BIOGRAPHY		130

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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
AFTA	ASEAN Free Trade Area
APEC	Asia-Pacific Economic Co-operation
ASEAN	Association of South-East Asian Nations
BTA	Bilateral Trade Agreement
FDI	Foreign Direct Investment
FIEs	Foreign Invested Enterprises
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPV	Communist Party of Vietnam
GUF	Global Union Federation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Union
ILO	International Labour Organization
IMF	International Monetary Fund
MOH	Ministry of Health
MOLISA	Ministry of Labour, War Invalids and Social Affairs
NA	National Assembly
NAFTA	North America Free Trade Agreement
NGOs	Non-governmental Organizations
No	Number
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSH	Occupational Safety Health
SA 8000	Social Accountability 8000 (Certification standard)

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LIST OF ABBREVIATIONS (cont.)

SOEs	State owned enterprises
TNCs	Transnational Corporations
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNEP	United Nations Environment Programme
UDR	Unionization density rate
UNICEF	United Nations Children's Fund
UNIFEM.	United Nations Development Fund for Women.
VGCL	Vietnam General Confederation of Labor
VND	Vietnam Dong (Monetary Unit of Vietnam)
WB	World Bank
WHO	World Health Organization
WTO	World Trade Organization

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LIST OF FIGURES

Figure	Page
1 Major products of Vietnam for export	4
2 Organizational structure of Vietnam Trade Union	58
3 Average income of workers in FIEs	74
4 Number of labor accident causing death from 2002-2004	93
5 Number of occupational diseases from 2002-2004	93
6 Strikes among enterprises of different sectors from 1995-2005	102

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CHAPTER 1
INTRODUCTION

1.1 Context of the Research

Vietnam is a Southeast Asian country with the total population of 83.6 million living in a total area of 329,247 square kilometers. Vietnam is divided into 64 provinces and cities It is rich in natural resources such as phosphates, coal, manganese, bauxite, chromate, oil and gas and timber. More than two-thirds of the total workforce in Vietnam are employed on the land. Major industries include: rice, rubber, food processing, sugar, textiles, and chemicals. The GNP per capita is US $ 480. According to UNDP Human Development index 2004 Vietnam ranked 112th.

The history of Vietnam is the history of struggle with powerful countries. It was ruled by China from 221 B.C. to A.D. 939 and from 1407 to 1428; since the mid 19th century to the early of the 20th century it was ruled by France, their rule ending with the victory at the battle of the Dien Bien Phu in 1954. Vietnam was divided until April 30, 1975, ending the 20 years of division between the North and the South. Since then, Vietnam has been ruled by the Communist Party and follows the socialist way of development.

Since July 1976 to December 1986, Vietnam operated under a centrally planned economy. This economy had the major features of the state determining the important economic activities through production plans and commodity distribution systems on the basis of strict regulations on pricing and interest rates. The state and cooperative economies were considered the base economies of the country with foreign trade limited to the relationship with the former Soviet Union and Eastern European countries.

In the late 1980s Vietnam began to move toward integration with the global economy with the *doi moi* (or renovation) policy which was initiated by the Sixth National Congress of the Communist Party of Vietnam held in December 1986. Following this policy the State, under article 15 of the 1992 Constitution have reaffirmed that the State is to “develop a multi-sector commodity economy under market regulation in accordance with state management and under a socialist oriented way”.

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The private sectors are encouraged to develop without limitation, and to themselves manage production and business activities. As stated in article 21 of Constitution 1992: “The private sectors are entitled to organize suitable production and business modes, with no operation limit in sectors having benefit for the people and nation; the household economy is encouraged to develop”.

Foreign trade relations were encouraged and expanded among all countries and international organizations without any distinction. Stated in article 24.1 of the Constitution 1992: “The state encourages international individuals and organizations to invest in Vietnam”. Vietnam has transformed from centrally planned economy with two types of ownership, State (or peoples) ownership and collective ownership, into a multi-sector market economy. This economy is based on different kinds of ownership: State, collective and private ownership under a socialist orientation. State (or peoples) and collective ownerships have played a key role in developing the economy. These two sectors have enabled economic development without exploiting labor, and at the same time are places where the laborers are the owner of their productive facilities. However, under *doi moi*, it is the

> Combination of all stronger postures brought about by different factors; concretely speaking the flexibility of market mechanism, the unity of institutions and orientations for action emanating from an unique center through the state management, and the socialist idea of raising the social welfare and effecting a fairer distribution of incomes among different social groups. (Institute of Economics 1994: 204)

With the policies of the Communist Party since the *doi moi*, Vietnam has step by step integrated into the global economy via reforming administrative procedures, creating favorable conditions to attract foreign direct investment, advanced technology, and management skills in order to effectively develop the country. It has signed 47 BTAs with 47 countries and territories such as Australia, China, Denmark, Finland, France, Germany, UK, USA, and so on; it has joined APEC, AFTA and expects to become new member of WTO at the end of 2005. As the US Department of State has said,

> Perhaps the strongest recent signal of the country's commitment to economic reform and improving the business climate were the entry-into-force of the U.S.-Vietnam Bilateral Trade Agreement (BTA) in December 2001 and

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> completion of agreements on economic reform with the International Monetary Fund (IMF) and World Bank also in 2001. (US Department of State 2005:1)

This has resulted in a change in foreign economic relations, especially with series of legal reforms in the foreign investment field such as: the Law on Foreign Direct Investment passed in 1987; Decree No.18 in 1993 on the forms of enterprises, international organizations and individuals investing and receiving FDI in Vietnam; Decision No. 53/QD-TTg in 1999 on investment priorities which gives details of FDI regulations in a variety of situations such as Business Co-operations, Joint-ventures; 100 % foreign-owned enterprises, Export Processing Zones, Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO), and Build-Transfer (BT).

Indeed, the international community has noticed the change in Vietnam's business climate. As detailed by the US Department of State,

> By December 2004, Vietnam had attracted nearly US$ 46 billion in investment commitments since the country was opened to foreign investment in 1988. Approximately US$ 27 billion, or 58 percent, of that amount has been disbursed in 5,109 projects. Sixty-six percent of disbursed investment was made into projects concentrated in or near the two major cities of Ho Chi Minh City in the south and Hanoi in the north. (US Department of State 2005:1).

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Table 1: Top Ten FDI in Vietnam by country (Total to Oct. 25, 2004)

Country	Projects	Total cap. ($US mil.)	Implemented cap. (US$ mil.)
Japan	476	5,088.00	4,110.00
Singapore	329	7,921.40	3,228.30
Republic of Korea	811	4,675.40	2,866.80
Taiwan	1230	7,164.50	2,787.40
Netherlands	52	1,790.30	1,966.30
Hong Kong	316	3,132.60	1,893.40
UK	210	2,363.60	1,129.30
France	140	2,157.50	1,051.70
Malaysia	160	1,273.30	800.00
United States	207	1,253.00	719.40

(Source: Vietnam Economic Times 2004)

Table 1 represents ten countries which have the highest percentage of FDI in Vietnam. It shows that up to now the countries having highest FDI come mainly from East Asia and South East Asia. Despite the enforcement BTA between USA and Vietnam in 2001, the percentage of FDI from USA ranks in the last of the table with the total capital of US$ 1.253 billion, small compared with the economic potential of the USA. The principal exports of Vietnam include cruel oil (19 percent), garment and textile (18 percent), Seafood (11 percent), rice (4 percent), and coffee (3 percent).

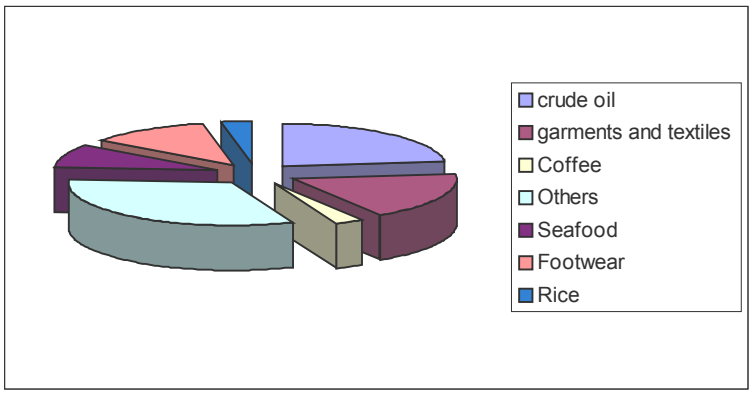

Figure 1: Major products of Vietnam for export

Source: UNDP 2004

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The *doi moi* policy, together with global economic integration, has influenced greatly the operation of Trade Unions in Vietnam due to the change enterprises in operation. A large number of state owned enterprises (SOEs) have been reorganized. The number of SOEs decreased from 12,000 (1990) to 6,000 in 1992. Since 1998 there have been 1,577 SOEs privatized alongside an increasing number of private enterprises such as foreign invested enterprises, private enterprises, limited liability enterprises, and stock enterprises. As stated by the UNDP, "In just three years, about 55,000 new businesses have been registered [in Vietnam], increasing the number of total private businesses to an estimated 70,000" (UNDP Vietnam 2003). Also, there has been a shift in terms of the workforces:

> The share of industry and construction employment rose from 13.2 percent in 2000 to 14.4 percent in 2001 while agriculture-forestry-fishery employment fell from 62.6 percent to 60.5 percent in the same period. Other changes have resulted from the government's streamlining of its administration and its restructuring of the state-owned enterprises.
>
> The number of people working in the state owned sector has dropped from 14.7 percent to 9 percent at present. In 2001 the foreign invested sector alone provided jobs to 354,000 people but recently the private and individual sectors are responsible for 60 percent of jobs created (Office of the United Nations Resident Coordinator Vietnam 2003: 10).

Among these changes women workers are a majority in the private sectors: "Women workers account for 37.7 percent in SOEs; 38.78 percent in local enterprises and 64.8 percent in foreign invested enterprises, focusing on mostly on processing industry (58.29 %) and agro-forestry (43.52 %)" (Ly, Trinh Khanh 2004:10).

Protecting workers' rights in both public and private sectors is the major task of Trade Union in Vietnam, no matter whether the workers are members of Trade Union or not. Article 10 of the 1992 Constitution states: "Trade Union is the socio-political organization of the worker's class and laborers, together with state agencies, economic organizations and social organizations care and protect rights and interests of the civil servants, workers and other laborers"; and, article 2 of Law on Trade Union: "the Trade Union represents and protects the rights and legitimate interests of laborers".

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Before *doi moi* most of the people of working age were employed to work for state agencies and SOEs. There they were regarded as the masters of the state agencies and SOEs, playing two roles, civil servants and enterprise workers. The directors at SOEs were in charge of double roles, state administrative managers and businessmen. Yet they were public officials rather than businessmen. Therefore, the role of Trade Union at that time was "administrative rather than representative" (Collins and Zhu 2003: 376). In addition, the Trade Union in Vietnam had the task of protecting the rights of workers only in public sectors.

Doi moi has brought a new task for the operation of Trade Union in Vietnam. It is no longer an "administrative agency" but is returning to the role of a Trade Union as the economic organization. Though, due to political reasons it has a very influential position in the political system because it is an important actor in maintaining the leading role of the CPV in State and society. And, though its major function, representing and protecting workers' rights, does not change its objectives have changed.

This research will explain the impact of *doi moi* and economically globalized Vietnam on the role of Trade Union in protecting worker's rights. Further, the research examines the role of the Trade Union in addressing worker's rights in private sectors, where labor related conflicts seems to be a current critical issue. Of concern is the implementation of international standards in these sectors with the regards to the protecting roles of the Trade Union and the success of the Trade Union mechanism for protecting worker's rights in private sectors.

1.2 Statement of Research Problems

Doi moi and economic globalization have created more chances for the workers to find jobs in different types of enterprises. As mentioned earlier, in recent years the number of workers and the number of enterprises in the private sectors has increased. Thus, it seems that the workers now have more freedom in determining whom they will sell their labor value for. While this may be true, they also face more problems arising from the labor relations with employers:

First, there are a great number of workers working in the industrial zones and processing zones. In these zones despite the vast lands for constructing factories, big

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roads and even the parks, normally there is no place to build the housing for workers. Because of low income, most workers have to live in bad housing, usually located in contaminated areas with no cultural activities, and rented cheaply.

Second, it is common that workers in the private sectors have to work additional hours over the maximum limit allowed by the state. The continually increasing working hours has badly affected the health of the workers, especially female workers. It also leads to other social problem such as they do not have time for social activities, education, and so on.

Third, there are many enterprises that are only concerned with profit and do not provide safe working facilities for the workers as prescribed in labor law .

Fourth, in the context of globalization the competition between enterprises is very high, which forces employers to find different means to increase their competitive capacity such as upgrading technology, streamlining operational structures, and sacking workers. Therefore, in the private sectors the risk of losing a job is very high and the workers always have to face the problem of being unilaterally terminated in breech of the labor contract, which is, of course, inconsistent with the labor law.

Fifth, labor disputes are increasing in private sectors. Many strikes have occurred that mostly originated from violations by employers such as increasing additional working hours without paying or not increasing the wages for workers as agreed upon by the two parties. To date no strike is considered legitimate and protected by the authority because the procedures are inconsistent in law.

Sixth, the domestic legislation on labor is still not enforced in practice because of causes such as: (i) workers and employers lack knowledge on the content of labor legislation generally and worker's rights particularly; (ii) labor officials lack knowledge and skills; (iii) limited number of labor officials to implement labor legislation; (iv) existing provisions in labor law do not reflect reality, for instance the provisions on labor dispute settlement.

Seventh, the number of Unionist as well as their quality of work in the private sectors is still limited due to obstacles from the employers and limited capacity from the Trade Union.

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Eighth, in the context of globalization the "foot loose" industry, including the textile and garment industry has been shifted from region to region to seek cheaper labor and incentive policies from the developing countries. Therefore, the developing countries themselves have to compete with each other in terms of creating favorable conditions to encourage foreign investment to develop their economy and create jobs for their citizens. Since market regulation is not friendly to workers, employers are always trying to reduce their production costs by finding cheaper labor as well as cheaper materials, low cost equipped facilities, and so on. Following this theory, the "foot loose" industry does not go hand-in-hand with respecting worker's rights since the Government of the developing countries cannot satisfy all requirements of the Trade Unions. Protecting worker's human rights will reduce the amount of foreign investors, and Vietnam is not an exception.

All of these problems mentioned above have violated human rights of the workers, especially the right to work, the right to a decent living, the right to safe and healthy working condition, the right to rest, leisure time; the right to organize and bargain collectively, the right to strike and so on.

The Trade Union in Vietnam is the core actor who can address and protect the workers' human rights in private sectors, since the primary function of Trade Union in Vietnam, as prescribed in the domestic laws, is to represent and protect worker's rights. However, to date the role of the Trade Union in addressing these problems has not been highlighted and solutions have not yet been found. There are many reasons to explain this, one of which is that so far there is not any specific research studying the role of the Trade Union in protecting workers' rights in private sectors, especially in the context of Vietnam's post *doi moi* economy.

This research hopes to identify the relationship between the Trade Union, workers' rights, and economic globalization especially in the context of Vietnam post *doi moi*; the relationship between the operation of the Trade Union mechanism and the fulfillment of its task in protecting workers' rights in private sectors. In addition, the research hopes to determine the compliance of the International Labor Organization (ILO) international standards in private sectors and the roles of the Trade Union to promote these principles. Finally, the research will identity how the

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Trade Union in Vietnam has used international standards as a tool to serve their worker's right protecting task.

1.3 Objective of Research

1. To identify the relationship between Trade Union, workers' rights and economic globalization in the context of Vietnam post *doi moi*
2. To investigate how Vietnam labor laws respect international human rights standards regarding workers' rights.
3. To critically evaluate the role of Trade Union in Vietnam in protecting workers' rights in private sectors.
4. To define the limitations hindering the exercising of the Trade Union's protection of workers' rights in Vietnam;
5. To determine if the Trade Union in Vietnam meets the international human rights standards and if they protection workers' rights.

1.4 Key Research questions

Main question*:* What is the role of Trade Union in Vietnam in protecting workers' rights?

Sub-questions*:*

1. What are policies and laws regarding the function of the Trade Union in protecting workers' rights?
2. What is the linkage between the Trade Union, workers' rights and economic globalization?
3. How has post *doi moi* and economic globalization impacted the protecting duties of the Trade Union in Vietnam?
4. How does the Trade Union in Vietnam address workers' rights in the private sector?
5. Does the Trade Union in Vietnam fail to meet its obligations in protecting workers' rights in the private sectors under domestic laws and international human rights standards?
6. Are there any cases or evidence which suggest that Vietnam labor laws have violated international human rights standards regarding workers' rights?

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1.5 Research Scope

The workers who are the subjects for my research refer to either industrial laborers or manual laborers working in the private sectors in Vietnam. The research also seeks a gender balance in its analysis. That means the objectives include both men and women.

The area where the in depth interviews were conducted was Hanoi city, where the headquarters of the central level Trade Union is located. It is also the area where there are large numbers of private sectors enterprises. However, some other industrial areas through the country are also studied.

1.6 Significance of Research

Until now there is no significant study on this issue. This study will contribute to the existing body of knowledge, from the Trade Union and academic research, on the roles of the Trade Union in protecting worker's rights, especially from a human rights perspective, which is a very new issue in Vietnam now.

This research contributes to the advocacy of international human rights standards in Vietnam.

It also enables the readers to understand the level of the compliance to Vietnam labor laws with international standards.

The research hopes to contribute to the reform of the Trade Union in Vietnam regarding the protection of worker's rights in the private sector. At the same time it is helpful to understand the relationship between worker's rights, the forces in the workers class, and state authorities invested with power from the Communist Party and the Constitution.

Lastly, I hope this research contributes to devising policies on housing for workers in industrial and processing zones, and contributes to the making of the draft Ordinance on strikes

1.7 Literature Review

The research topic has three macro concepts: the concept of Trade Unions, workers' rights and economic globalization. Within these extensive concepts this research attempts to map the linkage between them and determine contemporary

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issues and concerns. The research investigates the role of the Trade Union in Vietnam in protecting workers' rights.

1.7.1 Workers' rights

Workers' rights have been regarded as human rights by the international community for decades. They are recognized in the major United Nations documents such as the International Bill of Human Rights (the UDHR, ICESCR, and ICCPR), which acknowledges that human rights are universal and indivisible. It includes both civil and political rights, and economic, social and cultural rights. Civil and political rights include the right to a fair trial, the right not to be tortured or arbitrarily detained, freedom of expression, freedom of association and so on. Economic, social and cultural rights include the right to work, the right to a decent living, the right to adequate housing, the rights to education and health care, and so on. Via these important documents of the UN it can be seen that worker's rights include both civil and political rights and social, economic and cultural rights.

The struggle for workers' rights pre-dates the UDHR. Its roots are in progressive movements, such as the Tolpuddle Martyrs in the UK, culminating in the setting up of Trade Unions, and eventually labour movement political parties in the late 19th and early 20th century. The struggle for workers' rights is marked by the establishment of the ILO in 1919 with the Treaty of Versailles. Workers' rights are specified in the various legal documents of the ILO, such as Conventions on freedom of association, and the right to organize and bargain collectively (Nos. 87 and 98), equal remuneration and discrimination in employment (Nos. 100 and 111) and forced labour (Nos. 29 and 105), the Minimum Age Convention (No. 138), and so on. The ILO focuses on human rights of people at work such as the right to form Trade Unions, the right to strike, the right to be free from slavery and forced labor, equal employment, training opportunities, the right to safe and healthy working conditions and the right to social security. The ILO also "provides protection for vulnerable groups, having adopted standards on child labor, employment of women, migrant workers, and indigenous and tribal peoples" (Buergethal 2002: 127).

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Since 1998 as a response to the impact of globalization the ILO has released the Declaration on Fundamental Principles and Rights at work, which focus on the four standards known as core standards[1], which include:

Freedom of Association/Right to Bargain Collectively

Freedom from Forced Labour

The elimination of child labour; and

Nondiscrimination in employment

The ILO declaration creates an obligation for member state to ensure the protection of the four core standards. According to this all member states must report annually if they have not ratified the relevant ILO conventions on these subjects, and indicate the obstacles to ratification of the relevant Conventions.

1.7.2 Trade Unions

There are different ways to define Trade Union, whether is according to the *Oxford Dictionary* "an organization of workers, usually in a particular industry, that exists to protect their interests, improve condition of work, etc", or "Unions are mass organisations of the working class whose primary role is to achieve the common demands of their members. They are fundamentally *defensive* organizations. A good union cannot only improve workers' lives, win more leisure time and a better standard of living, they can also change governments and make very significant changes across society" (Glossary of Terms: 1); or it is a "collective organization of workers whose purpose is to allow collective bargaining and thereby maintain and improve the standard of living of their members. They act as defensive organizations set up to counteract the economic weakness of property less wage-earners as unorganized individuals" (McLean 1996: 501).

These different schools of defining the Trade Unions are suitable for different types of Trade Unions such as Trade Unions operating under the socialist regimes,

1 There are eight ILO Conventions make up the core standards as follows: Convention 87-Freedom of Association and Protection of the Right to Organise, 1948; Convention 98- Right to Organise and Collective Bargaining, 1949; Convention 100-Equal Remuneration; Convention 111- Discrimination (Employment and Occupation), 1958; Convention 29-Forced Labour, 1930; Convention 105-Abolition of Forced Labour, 1957; Convention 138-Minimum age, 1973; Convention 182-Worst Forms of Child Labour,1999 ;Viet nam was a member of the ILO during the periods 1950-76 and 1980-85. It rejoined the ILO in 1992.

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including Former Soviet Union, China, Viet nam, and so on. They are not only involved with improving the life of the workers, but also formally involved in the state power system. Therefore Trade Unions interests in Vietnam are always attach with the interests of the ruling Communist Party. Meanwhile, Trade Unions operating under capitalist regimes focus on the workers' lives. They also have political influences in the ruling states, but their political status is normally is not formally recognized. In the welfare states, for example, traditionally the Trade Unions have strong links with the left wing (such as the case of the Social Democrats in Germany). However, such relationships are becoming looser because of the trend towards liberalism in Europe which has made the Trade Unions in these countries unable to be too close with the conservative governments. The relationship between Trade Unions and western countries are inter-related since the two parties often rely on each other for legitimacy. However, whatever type of Trade Unions, they have the common concern of being the worker's representatives and the functions of protecting worker's rights and interests.

1.7.3 Economic globalization

There are many different perceptions of the term Globalization. In this research I do not want to debate the definition, but rather focus on an explanation of economic globalization nowadays since it directly relates to the objectives: Trade Unions and workers' rights. Generally, economic globalization is the trend of integration of production across national boundaries with significant increases in international investment by Transnational Corporations (TNCs) and the promotion of deregulation, free trade, free market, and privatization by the World Bank (WB), International Monetary Fund (IMF) and World trade Organization (WTO).[2]

[2] IMF was set up in 1944 with the aim to promote stability in the international economic system by over seeing the exchange rate system and international payments between countries. It provides financial and technical assistance to countries facing problems with their balance of payments. Such countries must conduct reforms under the conditions of taking the loan. WB was established in 1944 together with IMF, having the task to offer loans, technical assistance and advice to its developing and in-transition member countries for development programs. WTO was established after Uruguay round of trade negotiations (1986-1994) under the General Agreement on Tariffs and Trade (GATT) . This is the only global international organization dealing with the rules of trade between nations. Two principles (most Favored Nation (MFN) and the National Treatment (NT)) are used by WTO as the instruments to ensure free trade.

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TNCs are playing a central role in economic globalization and have been influential in labor market reform because of their huge capital and global production network. Since the 1990s, TNCs have accounted for over two thirds of international world trade in goods and services. The top 200 global corporations alone accounted for $3,046 billion of international sales in 1982, equivalent to 24% of world's GDP. Wealth among these TNCs is highly concentrated among the top 100 (mostly Northern) corporations with their combined revenues in the year 2000 coming to $ 6.6 trillion, higher than the combined GDP of over 180 middle ranking countries.

One study found that the production, marketing and selling of one particular 'American' car involved nine different countries. Only 37 % of the production value of the car was generated in the US; 30 % of the value went to South Korea for assembly, 17.5 % to Japan for design; 4 % to Taiwan and Singapore for minor parts; 2.5 % to Britain for advertising and marketing; and 1.5 % to Ireland and Barbados for data processing. (Sampat 2003: 41).

Till now there has been an extensive shift of TNCs to the developing countries, which have low-wage labor markets and cheap materials. Receiving countries are competing with each other to attract the investment of TNCs to fuel the national economic growth, create jobs for the citizens and access modern technologies by devising favorable policies such as tax reduction, leasing land cheaply, and simplifying administrative procedures. Taking advantage of this, TNCs have played an active role in political lobbying to reform policies in the receiving countries on privatization, free trade and deregulation. With all of these favorable conditions the status of TNCs becomes more dominant in the market of the receiving countries and step by step forces small businesses out of business.

Economic globalization on one hand with its impact on trade, investment, technology, international production systems, flows of information and communication, brings different economies of different countries in the world close together. But on the other hand it also has negative impacts on employment, working conditions, income, and social protection.

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1.7.4 Workers' rights, Trade Unions and economic globalization

Globalization is a challenge for workers and their trade unions. Pressure is put on governments to deregulate and, increasingly, to abdicate their role. A nation-centred system with national social and economic policies helped to create a degree of social justice and economic equity. This nationally based approach has come under severe pressure. Due to the diminished role of national institutions, there has been a certain shift towards the global level, but without an international framework or institutions in place that can deal effectively with issues of justice and equity.

An additional challenge for trade unions is the changing nature of the employer. In a world where capital is much more mobile than workers, different forms of business organizations have been created which can shift employment and threaten collective bargaining relationships (ICFTU 2001: 18-20).

In response to the negative impact of economic globalization and to create a strong voice for workers, the movement of Trade Unions in the world has been unifying and developing extensively. Among of the outstanding movements of Trade Unions are International Confederation of Free Trade Union (ICFTU), the International Trade Secretariats (ITSs), and the World Confederation of Labor (WCL).

To reduce the negative impact of economic globalizations on the life of workers, the need for international human rights standards respect for workers' rights is more essential than ever. This can be achieved through promoting pro-poor growth and productivity; globalization could benefit the poor and increase equity. It can be seen that when labor standards are suppressed, trade liberalization has often been associated with growing inequality.

Recently, the Trade Unions have had made much effort regarding protection of worker's rights, such as lobbying the WB to involve the core standards in their policies, lobbying WTO to include a 'Social Clause' or trade sanctions protecting workers' rights under the core standards of ILO into the rules of the WTO. Of course, there is still a debate about this with the claim that involving a 'social Clause' will only promote the interests of the workers in the North since it discriminates against goods coming from the South. However, so far there has been no evidence to prove it yet.

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In response to the increasing human rights abuses and promoting the advantages brought by the multinational corporations such as creating jobs, bringing capital and advanced technology, at the 1999 World Economic Forum at Davos, Switzerland, the United Nations Secretary General Kofi Annan proposed the Global Compact based on the international human rights laws such as UDHR, core principles of ILO, and the Rio Declaration on Environment and Development. It comprises UN Agencies, the Office of the High Commissioner for Human Rights, ILO, and civil societies. The compact includes ten principles, of which principles three to six deal with labor issues: "upholding the freedom of association and the effective recognition of the right to collective bargaining; eliminating all forms of forced and compulsory labor; abolishing child labor and eliminating discrimination in respect of employment and occupation" (Shapiro, Adam.2004: 2).

However, the global compact has received a lot of criticism since it has no legal binding for the compliance of the participant companies such as the cases of BP, Total, Shell, Rito, Tinto, and so on. Moreover, it does not have the monitoring institutions to examine the implementation of the participant TNCs on the nine principles. As a result the TNCs can take advantage of their participation as a substitute for real progress, distracting the public from the continuing violation of human rights, labor rights or environmental standards. The Compact and other UN corporate partnerships are also accused of creating undue corporate influence and weakening the work of intergovernmental organizations such as UNDP, UNICEF, UNIFEM, and WHO.

1.7.5 Workers' rights, Trade Unions in economically globalized Vietnam context

Workers' rights have long been the concern of the Vietnamese authorities. Workers have long played a focal role in the victory of the revolution against the colonization of the French and the USA. In addition, the most important reason is that Vietnam is the socialist State, following Marxist-Leninist doctrine. Ho Chi Minh considered workers the leading force of the state power led by the Communist Party as stated in article 2 and article 4 of the Constitution.

In addition, Vietnam has been a member of the United Nations since 1977 and ratified major treaties of the UN such as the ICESCR, and ICCPR. It joined ILO

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during the periods 1950-76 and 1980-85. Nearly 10 years after withdrawing its membership from ILO due to financial difficulty, Vietnam rejoined in 1992.[3]

Therefore, protecting workers' rights is an obligation of Vietnam. This is recognized in article 50, chapter V of 1992 Constitution of Vietnam. A major task of the Trade Union in Vietnam as prescribed in article 10 of the Constitution, is: "[the] Trade Union is the socio-political organization of the workers' class and laborers, together with state agencies, economic organizations and social organizations care and protect rights and interests of the civil servants, workers and other laborers." Article 2 of Law on Trade Union similarly states the "Trade Union represents and protects legitimate rights and interests of laborers". Founded in 1929, the Trade Union in Vietnam has long been regarded as a political actor, a close ally of the Communist Party. It has had the mission of gathering workers directly under its Communist Party leadership to conduct the revolution against the French and USA, and was one of the key force contributing to the reunification of the country in 1975. Since then, is the mission to build the socialist state.

Recognized as a socio-political organization, Vietnam General Confederation (VGCL) is the member of the Vietnam Fatherland Front, led by the Communist Party as stated in the Foreword of the Trade Union Constitution. The Trade Union mechanism in Vietnam includes the VGCL, Labor Federations at province level and Labor Federations of Central State agencies; Trade Union at upper Grassroots level and Grassroots level, and Trade Unions as stated in article 6 of Vietnam Trade Union Constitution. They operate under a democratic centralized principle-team leadership, managed by individuals. Trade Unions of lower levels have to comply with the upper levels. Article 5 of Trade Union Constitution decides the most important work of the

[3] To date, Vietnam has ratified 16 Conventions of ILO (15 in force): 3/10/1994: Night Work of Young Persons (Industry) Convention, 1919 (No. 6) ; Weekly Rest (Industry) Convention, 1921 (No. 14); Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); Underground Work (Women) Convention, 1935 (No. 45) Final Articles Revision Convention, 1946 (No. 80) Labour Inspection Convention, 1947 (No. 81); Final Articles Revision Convention, 1961 (No. 116) , Hygiene (Commerce and Offices) Convention, 1964 (No. 120), Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124), Occupational Safety and Health Convention, 1981 (No. 155); 20/2/1995: Minimum Age (Underground Work) Convention, 1965 (No. 123); 7/10/1997: Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111); 19/12/2000: Worst forms of Child Labour Convention, 1999 (No 182); 24/6/2003: Minimum Age Convention, 1973 (No. 138) (International Labour Standards Department:1)

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Vietnam Trade Union such as devising a Constitution, nominating senior staff, devising policies and programs, and so on.

Doi mo" has made an extensive impact on the workers' composition in Vietnam. The reorganizing of SOEs, proposed since 1991, has decreased the number of SOEs in the focal economic sectors such as construction, transportation, fishery, banking and insurance. SOEs have been privatized in different forms such as leasing or selling. The decreasing number of workers at SOEs means the number of workers in private sectors has increased considerably.

The development of multi-sector economy has created a gap in income among the skilled and unskilled workers themselves. The competition among the workers themselves also increases because of the strict competition among the enterprises. The unemployment rate increases due to the reorganizing of SOEs and there is much competition for work and many workers have accepted to be violated by unsafe working facilities or additional working hours because of economic hardship. All of these factors have led to many workers becoming vulnerable.

In response to the negative affect of the market economy to the life and work of the workers, recently the Trade Union in Vietnam realizing the importance of the change and has been trying to promote protecting through various of policies and activities such as expanding the number of Unionist in private sectors or providing wages for Unionists working in private sectors to avoid dependence on employers.

However, though recognizing the importance of the worker's right, until now there is almost no research on this issue generally and no research on this issue from human rights perspective.

A study on Trade Union protecting workers is *Trade Union Protects interests of workers, and laborers* by Dang Thuy Minh, which is in the framework of textbook for students at Trade Union College.

In this study the author mentioned the content of protecting by Trade Unions including some aspects that will be viewed in my research. Trade Unions are involved in solving unemployment and improving working conditions for the workers and laborers, wage and remuneration for workers and laborers, and Trade Unions with collective bargaining are involved in dispute settlement. However, the author only analyzes these issues in the form of mentioning the point of view of the Vietnamese

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leaders (Communist Party, and Trade Union) through stating the annual sessions on these issues, or provisions of labor law and trade union law. The author does not mention any international standards on human rights, especially from the provisions of ILO, though this study is written for the Unionists at all level. This implies workers' rights, viewed from international human rights standards, seems to be a very strange issue out of the awareness of the majority of the Unionists in Vietnam. Furthermore, there is the lack of critical analyze on the domestic policies and labor laws regarding the protecting function of the Trade Union in Vietnam. The reality and current problems that workers face, especially for those who are working in private sectors, are not addressed.

Another study by the research team of the Institute of Worker and Trade Union on *Enhancing the Efficiency of Trade Union in foreign invested enterprises*. This research studies the operation of Trade Unions in foreign invested enterprises. Issues investigated relate to the protection in foreign invested enterprises where local Trade Unions are operating. There are three issues mentioned of relevance: Trade Unions and collective bargaining; Trade Unions improving the working condition; and labor dispute settlement.

The authors pointed out the various activities of Trade Unions such as collective bargaining, monitoring the implementation of labor laws in the enterprises and labor dispute settlement. However, the objectives of this research are limited to workers in foreign invested enterprises, which does not really coincide with my research on workers in the private sectors. In addition, this research focuses on the operation of the local Trade Union in foreign invested enterprises and therefore responses to many "hot issues" on the violation such as the right to a decent living have not been clearly addressed.

Also, the authors only viewed the research from domestic laws without the existence of the international human rights standard. They do not pay attention to the compliance of international human rights standard regarding workers rights in the context of the foreign invested enterprises. The research is quantitative questionnaires, and they do not pay attention to the comparison between the findings from different sources. Hence, the approach of two above mentioned researches are quite different to my research approach.

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1.8 Organization of the Research

The Thesis is divided into five chapters. After the introduction, Chapter Two describes the methodological issues of the research, including the background of the study areas, and the reasons why those areas are selected for study, sample size together with the Tools for data collection, provisions for trustworthiness, data analysis procedures, limitations, and ethical issues.

Chapter III discusses the impact of economic globalization on Trade Union and workers rights, specifically in Vietnam post *doi moi* context.

Chapter IV evaluates the role of Trade Union in Vietnam in protecting workers' rights in private sectors, analyzing the impact of international standards and labor laws of Vietnam on workers rights and the role of Vietnam Trade Union in implementing such standards;

Chapter V presents the conclusions of the research findings and re-examines the major issues that the research expected to convey. Recommendations inferred from the research findings are also included in this final chapter.

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CHAPTER 2
RESEARCH METHODOLOGY

2.1 Selection of study areas

The area for my field research was Hanoi, the capital of Vietnam. The reasons why Hanoi was selected as the target area of my research are: *First,* Hanoi is the capital, where the head quarters of the CPV, Vietnam State and the VGCL are located in addition to other relevant agencies such as the Labor and Trade Union journal, the Labor newspaper, the Labor Protection Institute, the Institute of Workers and the Trade Union movement, MOLISA, and the ILO Vietnam. Therefore, conducting the research in Hanoi was to enable the researcher to collect relevant documents as well as to access the target interviewees; in order to contribute to answering the questions set out in the Research Questions. *Second,* Hanoi is the second largest economic center of Vietnam in the North. Ho Chi Minh City, though, is the largest city and biggest economic center in Vietnam, and it has attracted a large number of workers working for private sector enterprises. It is also a city, where labor disputes, including strikes, are relatively high; and according to the statistics of VGCL in 2003 the labor dispute in Ho Chi Minh city alone accounted for 49.7 percent of the total disputes while other is the percentage for Hanoi was 21.8 percent. So far, Ho Chi Minh City has been the focus for study on labor related issues especially issues on labor disputes because of these factors mentioned above. In Hanoi, though it is considered an important and representative economic zone of the Northern Delta, such issues have not been paid much attention. Hence, the study aimed to focus on Hanoi, not Ho Chi Minh city as a case study city where the researcher could conduct in depth interviews to fill in the gap on research between the two areas; in addition, it enabled the researcher to make comparisons on related issues between the two areas as well as with other areas concentrating a large percentage of workers in the country.

However, the researcher also selected one other city - Bien Hoa in Dong Nai province, 35 kilometers from Ho Chi Minh City. This is one of the areas receiving the

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biggest FDIs in the Vietnam. Bien Hoa city was used as the extra-representative area to check the hypothesis on wages of the workers in private sectors.

Hanoi is located in the center of the Northern Delta with a population of more than 3 million people in a total area of 920.97 square kilometers. It has geographical and infrastructure advantages compared with other regions in the North. Hanoi has easy access to the Noi Bai International Airport and the biggest seaports of Northern Vietnam such as the Hai Phong Port (Hai Phong city) and the Cai Lan Port (Quang Ninh Province) in addition to easy access by land transportation to other cities and provinces in the North. Moreover, it has a large population, providing a big consumption capacity as well as a labor force. Hence, it is obvious that so far Hanoi has attracted substantial economic investment.

Upon the promulgation of the Law on Foreign investment in Vietnam in 1987, and together with the realization of a series of Open-door Economy Policies there has been investment in enterprises from over 42 nations and territories. At end of 2003, in Hanoi there were 601 projects that had been granted investment licenses with a total investment capital of USD 9.1 billion. In only three months in 2005 it has attracted 922 million USD in foreign direct investment, of which 850 million USD was for 15 new projects and 72 million USD was additional investment in eight existing projects. Investors from Asia account for the majority of this investment.

In terms of geographical distribution, ASEAN leads in registered capital (44.4 percent of the total) and is the third largest in terms of project numbers (14.8 percent of all projects). Next comes Japan (16.4 percent in capital and 19.6 percent in projects), Western Europe and Nordic countries (12.2 percent in capital and 16.4 percent in projects), Korea (10.3 percent in capital and 7.8 percent in projects), and China, including Hong Kong and Taiwan (5.7 percent in capital and 20.8 percent in projects. (Nghien, Van Hoang 2003: 6).

Economic growth has increased steadily in recent years in Hanoi, which accounts for around 10.5 percent on average compared with 7.6 percent in the whole country. It has the highest industry concentration in the North of Vietnam and the second highest in the country (after Ho Chi Minh City).

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Hanoi after "doi moi" has also seen a considerable shift in terms of the development of private sector enterprises and the increase of workers working for these sectors:

In Hanoi, the total number of private sector enterprises is over 15,800. With the blooming of economic development in the past five years the number of workers in Hanoi has increased rapidly from around 450,000 to around 559,000. The number of those working at SOEs has decreased from 62,800 to 54,000 while the number of workers working in the private sector and non state sector has increased from around 144,000 to around 158,000 (Hanoi Federation of Labor 2004: 8).

2.2 Tools for data collection

The method applied to analyze the role of Trade Union in Vietnam in protecting worker's rights was based on qualitative research since the role of Trade Unions in Vietnam in protecting workers' rights is influenced by social phenomena such as the interaction of the social and political contexts. Documentary research was also employed since the role of Trade Unions in Vietnam relies on the laws and heir application; in particular, the issues of "doi moi" and workers in Vietnam have been mentioned in some recent researches. This information was very advantageous for the researcher.

The role of Trade Unions in Vietnam in protecting workers' rights is a sensitive topic, especially when identifying the status of Trade Unions in the political system. To eliminate the sensitiveness and to get adequate information the manner of conducting interviews and the questions set should be flexible. The respondents' opinions and attitudes were openly disclosed. Interview guidelines with open-ended questions and hand-taken notes were the instruments of data collection for this study (a tape recorder was not used to avoid the uncomfortable feeling for the interviewees, especially for those who were senior officials of VGCL). Hand-written notes were also employed to record non-verbal information. The interview guidelines (Appendix C) were reconstructed based on the conceptual framework discussed earlier.

Moreover, non-participant observation such as home visits, office visits and fieldwork observations were also used as complementary techniques to clarify responses obtained from interviews and to check the information collected.

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In accordance with the research methods, the following research tools were employed:

Textual analysis was used to review and analyze:

- The concepts on Trade Unions, worker's rights and economic globalization, especially in the context of Vietnam post "doi moi';
- The implementation of the international standards and domestic laws (labor laws, Trade Union laws) to promote workers' rights in Vietnam;
- Typical cases of workers' rights violations.

In-depth interviews. This tool was used to enable the researcher to access new information, which was not found in available documents. Also, it was used to check the findings from textual analysis. Semi-structured interviews were conducted with 11 informants who were unionists and workers. The in-depth interviews were used to get deep understanding on the impact of "doi moi" and economic globalization on the following issues: the protective role of Trade Unions in Vietnam; problems that workers in private sectors are facing; responses of Trade Union to promote worker's rights; influencing factors that can make Trade Unions able to fulfill their protective tasks. (Details of the topics for interview is given in Appendix C)

2.3 Sample size

The study sample included 11 informants. They were classified into two major groups: unionists and workers. To ensure the representativeness of the sample, the following criteria were set:

The unionists included 4 informants who were senior officials of VGCL, having experiences in working in Trade Unions and the workers' movement in Vietnam. The worker respondents included 7 persons who were divided into two different groups based on the criteria of diversification of job, working experiences, types of enterprises they are working with and gender. This was to compare the points of view of the workers as well as to analyze the role of Trade Unions in their respective companies. Three of them were white color workers (2 men and 1 woman) who were working in as tourism joint venture between Vietnam and France, a Singapore company in testing and measurement equipment for the telecommunications and

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electronics industry and a UK energy company. The 4 blue collar workers (3 women and 1 man) were working at Duc Giang Garment Company.

Duc Giang Garment Company is one of the most famous garment companies of Vietnam in the North. This company is operating in Hanoi and used to be a SOE, but now it has been equitised. The reason for selecting the workers in this company as research targets is that it promised to enable the researcher to make an evaluation on the work of Trade Unions in protecting worker's rights in these enterprises compared with other private sector enterprises since in such enterprises the role of the state is still very influential, hence, there exists a claim that workers' rights are better protected than in other private sector enterprises.

The in-depth interviews for the field study were conducted from May 6 to May 20, 2005. Since the interviewees as senior Unionists were very busy it was not easy to arrange an interview with them. Finally the interviews were conducted on May 6, May 13, and May 20; the interviews with white collar workers had to be conducted on Sundays when the workers did not have to work. For the garment workers the interviews had to be conducted in the evening (around 8 30 pm until 10 pm) since it was the time the workers had just come back home. These interviews were conducted on May 8, May 16 and 18. For the unionists, the place where interviews conducted was the headquarters of VGCL since the unionists were very busy and here I was able to conduct interviews and observe the working manner of VGCL staff at the same time. Because of personal relations (I used to work for VGCL), it was not difficult for me to access the unionist respondents; the problem was only the schedule.

For the white color workers the same applied; because of personal relations I could access them without difficulty. The place for conducting interviews was a coffee shop to create a comfortable environment for interviewing.

For the garment workers, the interview were conducted in their living apartments, which they were renting from local individuals. I was accompanied by a local resident who lives near their apartments. Thanks to his attendance the interviews were conducted without much difficulty since the trust between each other had been basically established.

Finally, non-participant observation was used as a supplementary tool to observe:

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- The operation of the Trade Union apparatus and the working manner of the unionists,
- Attitudes of workers to Trade Unions in Vietnam;
- The living conditions of the workers.

2.4 Provisions for trustworthiness

The question of trustworthiness asks: "Can we, place confidence in the outcome of the study? Can we believe what the researcher has reported?" (Maykut and Morehouse, 1994). Two processes contributed to the trustworthiness in this research. These were:

i. Use of multiple methods of research: Multiple methods were used in this research to get accurate information. Two categories of subjects were selected: unionists and workers. The unionists were senior officials working at different departments of VGCL and the workers included white collar workers and blue color workers to ensure a variety of information as well as to compare the differences of points of view of informants. The interviews were only conducted with the acceptance of the interviewees. Their point of view was recorded without any change.

   In addition, cross-checking of data generated from documentation analysis, interviews with observations, comparisons and contrasts of data by different categories of informants were also done.

ii. I did seek both positive and negative findings to overcome any research bias in criticizing the role of Trade Union in Vietnam.

iii. In addition, a factor that increased the "trustworthiness" and minimized threats to validity during data collection was that both the researcher and the interviewees were Vietnamese. Hence, the researcher could understand the interviewees easily even when local terms were used. At numerous times during the fieldwork, data was collected through cultural understanding - for example, when the interviewees kept silent. Besides, the researcher found it was not difficult to understand the psychological feelings as well as the professional work of the workers involved in either manual work or intellectual work as well as the Unionist since the

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researcher had experiences in working with them and was involved in the labor issue in Vietnam.

2.5 Data analysis procedures

Data analysis was done concurrently with collecting data in the field. At the end of each interview, field notes were synthesized with the researcher's analysis and interpretation of the information collected. Field notes included the following information: date of interview, who was met, in what situation, basic information on personal background of interviewee and their respective companies; and the context of the interview, including the researcher's feelings and observations during the interview.

First, the interviews were read carefully to catch particular opinions and the idea implied behind the statement during the interviews. *Second,* data was divided into smaller categories, for instance: work that the Trade Union of the target enterprise had done; the person or organ that workers in the target enterprise usually went to when deeming their labor rights had been violated; problems that workers in the private sector were facing, etc. *Third,* the data was coded by organizing and classifying the information. From the coding procedures, a multitude of different data types and their contents could be logically separated out. Afterwards, data were grouped together by similar responses. For instance, almost all worker respondents said the role of Trade Union in their enterprises focused on social work, etc.

Each informant's responses were compared to the others before the data was coded. There were two major categories under the conceptual framework that the research concentrated on - worker's rights and Trade Unions in Vietnam post "doi moi". Establishing files was the next step of data analysis, which revealed the main themes, and summarized statements in the interviews.

2.6 Limitations

This study employed qualitative research as the major method of the study with the use of a small sample size. Furthermore, the unionists of lower levels, especially at the grassroots levels were not accessed. Hence, this may have affected the representativeness of the sample.

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Since data collection was done in a very short time - one month and a half -, despite great efforts made by the researcher, some shortcomings regarding data collection were unavoidable.

Additionally, since the studied issue is a sensitive one questions were not very easy to answer, especially for the unionist respondents; sometimes they did not answer or did not air their real personal opinion but mentioned general views such as the policies of the State, CPV and VGCL, and so on.

Limited awareness of workers on the work of Vietnam Trade Unions in addition to the limitation of education level of the blue collar worker interviewees also may have affected their comments on Trade Unions.

The recording of interviews employed only hand-notes since the informants did not want their opinion to be recorded by tape-recorder. It was unavoidable that some information would be missed.

There was little documentation on the implementation of ILO conventions ratified by Vietnam.

The evaluation of working manner of VGCL, the attitudes of informants during the interview and living conditions of workers was made only on the basis of non-participatory observation over a short time. Hence, such observation may not represent all the variety of facts.

2.7 Ethical issues

This research was firstly based on textual analysis, a form in which the ethical concern mostly focuses on the confidentiality of the reviewed documents. In this research the documents reviewed were public from Government sources or newspapers, or other published documents from both international and local organizations. Therefore, the ethical concerns in the research were not a problem.

Furthermore, qualitative method-in-depth interviews were used. Before conducting each interview, I explained the purpose of the research in detail to the interviewee and it was only conducted when the approval of the interviewee had been granted. The respondents were informed that they could withdraw from the study at any time or for any reason. The informants were treated respectfully and the purpose of the interview was explained adequately. To avoid the vulnerability for the

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interviewees, personal information (name and address) of the interviewees would not be revealed in the research; and, at the request of some interviewees, information on the real name of their enterprises were kept confidential.

The interviews were conducted in a friendly way to create a comfortable feeling for the interviewees. Hence, places for interviews were different as mentioned in item 2.3. to ensure the convenience for the interviewees.

Contents of the interviews were conducted under the voluntary acceptance of the interviewees. During the interviews the researcher respected the behavior of interviewees whether they answered or did not answer the questions. As mentioned above the researcher had not met much difficulty in accessing the interviewees because of the personal that had existed previously. However, the researcher had no power to influence their answers. In addition, to ensuring the trustworthiness of the research no personal opinion of the researcher was involved during the interviews. No guided answers were made. Their statements were recorded without change to avoid the risk of misinterpretation.

Additionally, during the interviews the researcher was patient to ensure that the informants were not interrupted in order to provide valid and reliable data. Moreover, the questions were arranged and adjusted if necessary to suit the particular atmosphere of the conversation as well as the knowledge of each interviewee.

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CHAPTER 3
IMPACT OF ECONOMIC GLOBALIZATION ON WORKERS' RIGHTS AND TRADE UNIONS

This chapter is divided into two sections. The first section I will discuss the General concepts on impact of economic globalization on Worker's Rights and Trade Unions, in which I will discuss how economic globalization has brought to the life of the workers regarding employment, wages and working conditions, especially for the workers in the South, to the Unionism in the world. And, liability of TNCs when violating international labor standards will also be discussed in this section. The second section will discuss the impact of economic globalization on workers' rights and Trade Union in Vietnam, in which the workers' rights and Trade Union in Vietnam before "doi moi" and post "doi moi" will be looked into. Important issues such as the communist ideology preservation and integration of the globalized Trade Union movement regarding the transformation of Vietnam Trade Union; the relationships among CPV, Vietnam State and Vietnam Trade Union will also be discussed in this section.

3.1 General concepts on impact of economic globalization on Workers' Rights and Trade Unions

Since 1980s the world has seen the transformation of economic globalization with the growth of FDI in other countries, especially from the North to the South, and financial market flow "from mid-1970s to the early of 1990s the daily turnover of the foreign exchange market climbed from $1 billion to $1.2 trillion a day" (UNCTAD 1994) and the widespread appliance of the principle of deregulation, free trade and privatization promoted by the Bretton Woods Institutions, the diffusion of advanced technology in the world that have shorten the and drop the cost of communication and transportation. For instance, the cost of a three minute telephone from New York to London dropped from about $250 in 1930 to a few cents today. The number of voice

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paths across the Atlantic has skyrocketed from 100,000 in 1986 to more than 2 million today. The number of Internet hosts has risen from 5,000 in 1986 to more than 40 million now.

The development of advanced technology in the whole production and industry lines that has led to the dramatically raising of productivity of labor and generated profound changes in labor market that the demand of labor tend to grow slower than the supply of labor; And, the increasing of establishment and consolidation of regional trading blocs such as NAFTA, AFTA, the Commonwealth of Independent States, and APEC , the increasing role of WTO in the global economy.

Despite the claim that economic globalization has been used as a precondition of the North to provide financial aids or trade opportunities for the South so that Governments in the South may have no option but to go along with it if they want aid or financial opportunities; and the use of double standards and unfair trade to maintain the protection for the North against the preferable products from the South meanwhile forcing the South the pursue free trade there are more and more countries in the South feel the need to integrate into the economic globalization. Moreover, economic globalization has intensified the interdependence among countries, increasing much more challenges for nation-states since the economic insecurity is much greater today than before.

Around ten years ago, the coffee growers in Vietnam did not bother about the coffee price in the world. Thing is much different now. Coffee account for three percent of total exported products of Vietnam. Hence, it has to depend on the coffee price in the world. In 2003 the coffee price in the world dropped that had led thousands of coffee growers in Vietnam cut down the coffee trees for other plantation.

Moreover, with the diffusion of technology in most production activities that have enabled many access similar pools of advanced knowledge together with the existence of TNCs, which can shift their production to the most favorable environment for investment to produce globally, the specialty of products, of which only could be grown in certain areas such as Grape of USA, Mango of Pakistan, Dragon fruit of Vietnam can be easily competed from elsewhere.

TNCs have been playing the key role in economic globalization with their over two thirds of the share of international world trade in good and services since the

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1990s, operating mostly in the North. In the race to increase profits, reduce production costs TNCs have increasingly turned their attention to the South, where wages and production costs are lower than in the North together with the unorganized Unions, preferable investment policies offered by the host countries, availability of natural resources and preferable geographical locations, especially in most of developing countries economies that have put TNCs into more dominant position.

How has economic globalization brought for the life of the workers?

First, regarding the employment created by TNCs. There has been claim that TNCs would bring more jobs for the workers, especially in the South. It is argued that the employment provided by TNCs are uncertain since they are likely move to countries have more preferable conditions, moreover, with the trend that more and more countries joining WTO will enable the TNCs to have more chance to shop around to find cheapest resources, including workers. If TNCs employment is growing at all, it is due to acquisitions and mergers rather than to new employment opportunities. A new TNC owned factory may create jobs but at the cost of existing jobs in locally owned factories. A net gain of jobs may not result. It is estimated "up to 120 million workers are now officially unemployed (35 million in the European Community alone) and another 700 million are seriously underemployed" (UNCTAD 1995/1996: 28).

Moreover, with the use of modern working facilities on mass production lines, the workers are turned into a part of the machine, performing a small and specialized task of a large operation. Neither do they equip the workers with working skills that they may have in other local firms. This has made the workers more vulnerable when losing jobs.

Second, there has been a claim that with the diffuse of economic globalization the current real wages and high labor standards in the North would be dragged down because of the trading with the South with low wages and low labor standards. It is argued that trading with the South is likely to have improved wages in the North.

A recent empirical study by the economists Robert Feenstra and Gordon Hanson examined the effect on real wages of unskilled American workers as a result of outsourcing (i.e., buying components oneself) for foreign suppliers of labor-intensive components in U.S manufacturing during the period 1972-

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1990. This study also concluded that the effect of such imports of labor-intensive goods for producers (rather than as goods for consumers, such as textiles and shoes), much of it also from poor countries, actually raised the real wage of the workers (Bhagwati, Jagdish 2004: 127).

Furthermore, the removal of tariff policy would benefit the poor consumers in enabling them to access the products of real prices without the existence of may time higher prices due to tariff, which undercuts the real incomes of the poorest consumers.

Labor standards in the North also not worsen systematically because of the trading with the South. But, it is basically because of other non-related trade reasons-weak enforcement of domestic laws and the presence of illegal migrants. For example, the case of American garment industry as pointed out by Bhagwati, Jagdish where the politically active Union of Needletrades, Industrial, and Textile Employees (UNITE) operates. There is no evidence that the competition among this industry has led to a decline in labor and safety standards in the garment district in New York City, for instance. And of course there are many sweatshops in the garment district. But the causes of these low standards, in violation of legislated standards, are twofold: the appalling lack of enforcement (because of a dearth of inspectors through the 1980s and 1990s) for the industry nationwide, and the presence of illegal immigrants who can not demand legislated rights because of fear of deportation.

What about the wages and working condition in the South? Are the TNCs paying wages together with the working condition lower than the local enterprises or in alternative jobs?

That TNCs exploit the workers in the South by paying low wages is undeniable charge. However, up to now there is still a debate on the roles of TNCs regarding worker's rights in wage paying and working conditions provided from the TNCs compared with the other local firms. Some of the economists claim that the TNCs have been playing the important role in improving the wages for workers in the South compared with other local firms. "Several empirical studies do find that multinationals pay what economists now call a "wage premium": they pay an average wage that exceeds the going rate, mostly up to 10 percent and exceeding it in some cases, with affiliates of U.S multinationals sometimes paying a premium that ranges from 40 to 100 percent". (Bhagwati 2004: 172).

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Regarding the case of Vietnam the Viet Nam Salary Survey 2005, conducted by the Navigos Group and VietnamWorks.com on 208 leading foreign and local businesses, including more than 35,000 employees located in all major business and industry centres of Viet Nam also show that "it is foreign businesses pay as much as 34 per cent higher wages than local businesses". (VNS, 2005: 1)[4]

However, this claim is not really correct at least in the case of Vietnam. Though, according to formal statistics, the average wage of the workers in TNCs is much higher than the local firms; but, such figures do not are not exact since they are only true for some TNCs who work in high profit sectors such as energy, telecom, IT, etc. The rest, such as garment and textile, shoe, food processing, which of course have been attracting a large percentage of workforce, especially women workers in Vietnam as well as in other developing countries in the South the real income as well as working conditions of the workers are not much different with the local firms plus continuously additional working hours with low remuneration or without remuneration. (For more detail see Chapter IV item 4.2)

Moreover, the race to bottom hypothesis may be disapproved by some economists. But, the existence of the market in the world today is very complex and changeable over time due to not only economic reasons but also other non-trade related reasons such as the instability of the world politics at present, hence, the supply of labor may stay the same or expanded not depending on the increase or decrease of wages. And it may happen that the workers offer their labor productivity at the price that does not cover their labor reproductive expense. Rapid population growth in the South nowadays contributes to an oversupply of labor. However, even without population growth labor power can be in oversupply.

> This is the case when industrial agriculture or world-class manufacturing meets subsistence or traditional industry. The displacement of the low-productivity subsistence agriculture or of inefficient industry (which had been protected by high transport costs or high tariff) can release workers faster than the more productive market-oriented agriculture or modern manufacturing industry can

[4] For more information on workers in foreign invested enterprises in Vietnam see chapter V

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> absorb. This over supply or labor power is exacerbated by impediments to market exit. Without corrective intervention, the impoverishment of large segments of workers can turn into a self-propelling downward spiral: an increase in labor supply forces real wages down, lower wages in turn increase the labor supply in the next round. (Scherrer, Christoph 2001:49)

Toys, shoes, chemicals, electronic equipment and transport equipment are among the main manufactured goods produced by TNCs, their affiliates and their sub-contractors in developing countries. In some countries, especially in the fastest growing developing countries, the percentage of products produced by TNCs account for the majority of the total production in such countries. "TNCs in Thailand, for example, account for 49 percent of total output of manufactures, 89 percent of the country's output of electrical and electronic equipment, 80 percent of out put of mechanical equipment, 72 percent of chemical output, 60 percent of the manufacture of transport equipment, and 46 percent of textile, apparel and leather output (UNCTAD 1995 :230)

Nowadays, TNCs have increased their production through sub-contracting with small local firms to produce a certain types of products such as toys, garment, shoes, etc. under the brand name of the TNCs. There have been evidences worldwide that TNCs, its affiliates and sub-contractors have been violating worker's rights in name of low wages, long hours and poor working conditions, the use of child labor, etc. such as the case of Mattel (Barbie Dolls), Nike (shoes), Levis in Asia. For the case of Vietnam regarding the working condition see chapter IV item 4.3.

There have been increasing No of countries (178) ratified ILO Conventions[5]. However, the commitment of member states do not always go hand in hand with the compliance to international standards in their respective countries. Liberalization of foreign economic policies has gone along with increasing social inequalities and massive expansion of the informal sector, where labor rights are generally violated. "Over one-fifth of the world's population survives in conditions of abject poverty and more than 700 million working men and women are not productively employed". (ICFTU, 2004)

[5] From ILO source updated March 11, 2005

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> The vast expansion in trade and investment, particularly in the 1990s, has had equally profound effects on labour standards around the world. While some regions have benefited, the negative effects are most obvious in the 850 export processing zones around the world where minimum labour standards are regularly violated and trade union organisers are forbidden entry. On average, 80 percent of the workers in the zones are young and unorganised women workers. 15 million children work to make items which enter into international trade. Forced or slave labour is used on a massive scale in some countries to produce textiles, gold, diamonds, agricultural exports and other commodities (ICFTU 2005).

Privatization has led to marginalizing the massive of workers, declining social benefits have increased earnings and profits for the new private owners; increasing prices of services, electricity, transport, etc. has decreased living standards of wage workers while increasing profits for the private monopolies that have taken over the public ones.

Despite the acknowledgment of member states on international standards on Trade Union's rights the rights of the Unionists in the world have been seriously violated because of their acting as the worker's defenders. "State repression of unions is on the rise world wide: in the three years from 1992 to 1994 these incidents increased by 65 percent compared with the preceding period and they affected 98 countries. In 1998, there were violations against ILO Conventions No 87 and No 98 in 119 countries" (ICFTU 1995 and ICFTU 1999 a); "Between 100 and several hundred trade unionists are killed each year. Several thousands more are imprisoned, beaten in demonstrations, tortured by security forces or others, and often sentenced to long prison terms. Each year, hundreds of thousands of workers lose their jobs merely for attempting to organise a trade union". (ICFTU, 2005:1)

On the other hand economic globalization has also led to the solidarity of Trade Union movements in the world, including the integration of Trade Unions in socialist countries such as China and Vietnam (the case of Vietnam see chapter III), for instance, ICFTU has gathered 215 national Trade Union centres with about 125 millions members in 145 countries. As the result, there have been the common voices from Trade Union movements in the world in response to the violations of workers'

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rights and trade union rights and promoting such rights under international labor standards. Such activities can be providing practical daily support to the local trade unions, lobbying at key international bodies such as ILO, WTO, etc.; organizing protest campaigns, etc.

To now there has been no international legal biding to deal with the violation of TNCs regarding international labor standards except when TNCs involve in international war crime to be governed by ICC. In response to the behavior of TNCs on the worker's rights violation as well as the failure of the governments in ensuring its worker's rights there have been such initiatives as Code of Conduct, Social Labeling, SA 8000 clause to improve working conditions and promote worker's rights. Such initiatives are urged to be followed by TNCs through public pressure to maintain their brand name since the behaviors of the consumers have become more and more important in the context of growing competition among TNCs worldwide.

However, so far there has been little information on the implementation effectiveness of these initiatives since these products focus on only a certain number of companies. Furthermore, since the TNCs are paying attention to these initiatives not because of their truly voluntarily but because of the pressure from the consumers, but, there has been nothing to ensure that such pressure will not change, especially without the existence of core actors in monitoring the working conditions in the world, it is unavoidable that the consumers may not confuse because of the great number of different codes of conduct. Moreover, there has been no certainty to ensure the independence and transparency of the work of the monitoring agencies.

Additionally, the purchasing decisions of consumers are actually "based more on price signals, habits, and advertising, than on the appeals of advocacy organizations. Even though competition among companies causes them to react sensitively even to small changes in market share, the labor practices of one company is, first, most often not much better than the next, so that consumers do not really have alternatives". (Scherrer, Christoph 2001: 129-130).

Even nowadays there has been a trend of cooperation between the employees' organizations, and NGOs, however, there are no certainty of being played off against each other "e.g., in the case of the Apparel Industry Partnership" (Scherrer, Christoph 2001: 129-130).

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Another initiative is social clause that making WTO membership conditional upon recognition of labor standard or acknowledging the role WTO in monitoring the implementation of such standards. However, such initiative is not much persuasive since it may be used by the North as the tool to protect their products against the South.

Similarly, the initiatives such as the one from US on agreeing to increase quotas for Garment and textile products from some of countries signing Bilateral Textile Agreement with US in return for the compliance of workers' rights, including the protection for union leaders and the collective bargaining agreements under international standards, such as the case of Cambodia, Thailand, and so on. But, there has been no measures guaranteeing such these initiatives from US do not convey any "trade off" other than promoting workers' rights.

Other initiatives from the Trade Unionism is the reform of their behavior with TNCs through the development of trade union relations with TNCs, including at the level of the global corporation for information exchange and consultation, is an important element of new union strategies to promote workers' interests. For example, at its sixteen world congress ICFTU has affirmed its effort to strengthen union representation within TNCs since "TNCs often play a leading role in the labour market which other employers subsequently follow. Building an international dimension to union relations with such companies is a vital element in securing the trade unions' role in a changing global market" (ICFTU 2003:1)

In sum, economic globalization has placed a great impact on worker's rights and trade unions. To promote the positive part of the economic globalization and eliminate the exploitation of TNCs on workers productivity it is necessary to promote fair trade as well as seeking for proper measures to ensure the international labor standards, particularly ILO standards.

3.2 Workers' rights and Trade Union in Vietnam

3.2.1 Workers' rights and Trade Union in Vietnam before "doi moi"

Before "doi moi" workers' rights had not been paid much attention. This can be proved through looking into four Constitutions of Vietnam since 1945 such as

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Constitution 1946, Constitution 1959, Constitution 1980 and Constitution 1992 as well as relevant laws. Constitution 1946 did not mentioned on Trade Union and workers' rights. However, the freedom of association and organize was acknowledged generally under article 10 of Constitution 1946; Constitution 1959 under articles 25, 30, 31 and 32 implied a development in the field of human rights, including workers' rights such as the right to work, the right to freedom of expression; press; gathering; organizing and going on strike; the right to rest and receive financial assistance when getting old, sick or lose the working capability and the obligation of Vietnam Trade Union in protecting workers' rights in both public sector and private sectors. However, due to the war such provisions had limited room fore enforcement.

Vietnam Trade Union at that moments paid more attention to the revolution involvement to struggle for protecting democratic rights of the people in the South as well as to normalize the relation between the North and the South of Vietnam for a united and independent nation as stated in article 4 of the Trade Union law 1959. In addition, though recognizing the task to protect rights and interests of the laborers as stated in article 4 of the Trade Union law 1959 there had not been much room to implement such task, meanwhile, the task of Vietnam Trade Union to involve in state management in the building of socialist State in the North of Vietnam during the period 1954-1975 had been respected. Particularly, in the state enterprises or agencies the Trade Union was entitled to represent laborers to involve in the institution management; monitoring and assisting the implementation of policies and implementing the regulations on rights and interests of laborers; executive board of the Trade Union was entitled to request the institution director to report on issues related to rights, interests and obligations of the laborers in such respective institutions as stated in article 6, article 7, article 8 of the Trade Union law 1959. In private enterprises the Trade Union was entitled to "represent the workers to organize negotiation with the employers and sign contract between the employees and employers; monitor the implementation of such contracts and the regulations on production and business activities; rights and interests of the workers (article 9).

Since the establishment in 1929 Vietnam Trade Union had played very active role in the national revolution to gain independence for the country. After the long resistance war ended in 1975 Vietnam was reunited from the North to the South. The

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building of an independent State under socialist orientation has been conducted in the whole country. During this period until 1986 reforms, especially in the field of economy had been conducted with the aim to build a socialist economy with the acknowledgement of two major sectors-state economic sector and co-operative sector so as there would be no difference between the people, no exploitation of labor; equality in society was ensured. This economic reform idea adopted by the 3rd Party Congress in 1960 was reaffirmed to be applied again in the whole country at the 4th Party Congress. The state sector included industrial, trading and service activities. The collective sector included handicraft and small industrial and agricultural activities. At the same times revolution on production relation and reform of non-socialist economic sectors, mainly the private sectors developed under the capitalist condition in the South of Vietnam was conducted in the whole country.

> The State conduct revolution on production relation, direct, use and reform non-socialist economic sector, establish and consolidate socialist ownership system on working facilities to implement a nation mainly exist two sectors: state economic sector under the People's ownership and co-operative economic sector under collective ownership of the laborers. State economic sector holds the major actor in the national economy and is given priority to develop (Article 18 of 1980 Constitution).

However, since the development level in terms of economy between the North and the South of Vietnam was different after the war ended. There had been a different demand between them, for instance, the South needed materials to sustain its industrial production. Meanwhile, the North preferred the consumption products. The reform conducted had created a change in terms of relations of demand and supply, practice of consumption and forms of industrial production, and so on between the two regions. Moreover, the imbalance between demand and supply become larger and larger since the available aids of commodities coming China was cut off, especially since 1978 with the event of Vietnam's interference into Cambodia (1978-1989) and from Soviet Union was diminished.

Hence, it is clearly seen that the economy of Vietnam at that moment was very difficult when it had to combine and run an economy made from the exhausted economy of the North because of its support during the Vietnam war and an amateur

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capitalist economy in the South. Its production could not serve its demands with the removal of aids and hostility from China and diminish of aid from the Soviet Union, together with the embargo of the US as well as the disapproval behaviors of other countries, especially from the regions for the interference in Cambodia but still had to support its expenses for the overthrowing the Khmer Rouge regime.

Under the Constitution 1980 Vietnam Trade Union was entitled to involve in state management activities; enterprise management (article 10). During this period Vietnam Trade Union acted as an administrative agency rather than a mass organization. At the central level it was considered a part of the state apparatus and at the local level it involved in managing organizations and agencies operating in the respective localities. Though having a task in protecting worker's rights such task was not taken seriously since there existed the perception that individual, collective and state interests are united; there would be no difference and no dispute among such interests.

In addition, during this period the legal framework on Trade Union in Vietnam did not develop. There were provisions governing Trade Union as stated in article 10 of Constitution 1980 and article 4 (c) of Trade Union law 1957 but specific rights and obligations of Trade Union in Vietnam as well as the distinction and cooperation between it and other organizations, especially state agencies had not been governed in detail. Hence, there had been no actual favorable rooms for Vietnam Trade Union to operate. Moreover, because of the existence of central planning economy labor relation was transformed into administrative relation since jobs were provided and arranged by the administrative bodies, not depending on the wills of the employees and employers themselves. It means it does not matter whether the workers and employers may liked or may not liked to work for each others or the professional capacity of a specific worker may not suited with his job arranged. The operation of production and business were also done by administrative decisions issued by authorized officials of administrative agencies. Hence, the characteristic of labor was inflexible with the inactive involvement of employees and employers. And, because of the existence of such labor relation and arrangement together with the perception that the interests of each individual went hand in hand with the interests of the collective and state and that the workers obviously were master of facilities because

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of the existence of the two major property ownership-collective ownership and the people's ownership as represented by the state in which the workers were regarded as the master of working facilities it was claimed that worker's rights were obvious.

There is no evidence to prove the accuracy of this claim, however, the workers' rights in this period was more or less guaranteed in the sense that the State was able to provide full employment to its citizens with secure jobs though they were not allowed to select or change a job under their wills, housing for the workers were provided free though in poor condition, discrimination in employment and remuneration of the same jobs did not exist, etc. Nevertheless, the role of Vietnam Trade Union in protecting worker's rights was not clear. And, the protection of the rights of the workers working in private sector was ignored since policies, especially the ineffective implementation of the Resolution No VI adopted by the CPV in 1979 provided for encouragement of private economic activities to some extent and SOEs were given more room to manage their activities. The workers and peasants were given more benefits on the basis of the work done by them had been conducted ineffectively.

Economic reform did not bring much positive change to the economic development of Vietnam as well as to the improvement of the living standard of the people mainly because of the wrong doings of reforms in denying the existence of the private economic sectors and the application of land collectivization policy, and so on. In 1986 the Vietnamese economy touched its lowest point since 1954 of which in many cases these could be explained as the results of the wrong doings of domestic economic reforms as well as the financial and resource burden from the intervention in Cambodia, the hostile responses from China and other countries due to such intervention in Cambodia of Vietnam and the reduction of financial support from Soviet Union due to its crisis in the running of socialism mode. Compared to 1985, the inflation rate was 570 percent. Loans granted increased by 800 percent, and money in circulation by 740 percent. Production was disrupted, the market was in chaos and people's life became extremely difficult.

> In 1984, the national budget was overspent by 38 percent compared to 1983, because foreign loans and aid accounted for only 15 percent of the budget entries and the inflation rate rose to three-digit level. The consequences were so bad that the monthly wages of an ordinary employee covered only expenses of

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the seven days. The situation compelled the leadership of the state to seek overall reform. (Nghiem, Huu Do 1996:51-52).

In sum, the role of Trade Union in Vietnam in protecting workers' rights in the period before "doi moi" though being acknowledged in laws there had been little room for it to exercise such task due to historical cause of the war as well as the existence of the central planned economy and the lack of legal system in detailing the exercising of the workers' rights protection function so that this function was not regarded important.

3.2.2 Impact of Vietnam post "doi moi" on workers' rights and Trade Union

The economy aimed to run under "doi moi" is the market economy, which recognizes and encourages the existence and development of multi-economic sectors based on different ownership such as the people's ownership or state ownership, collective ownership and individual ownership. Enterprises of different sectors are equal with each others before the law to run their production and business activities and being the important components of the market economy under socialist orientation as reaffirmed in IX Congress of the CPV on the strategy of socio-economic development 2001-2010.

Until now Vietnam still reaffirm its aim to strive forward socialism. In terms of economy though following market economy it is aimed to run the economy under socialist orientation. In pursuant to this attempt two types of ownership- ownership by the state and by collectives are considered the foundation of the economy.

The State promotes a multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation. The multi-component economic structure with various forms of organization of production and trading is based on a system of ownership by the entire people, by collectives, and by private individuals, of which ownership by the entire people and by collectives constitutes the foundation (article 5 of 1992 Constitution)

However, there are changes in terms of these two ownerships themselves. The state economic sector is reaffirmed to continually reform and develop to well implement its leading role in the economy. It is considered the important tool for the

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state to govern the economy, investing for infrastructures. The SOEs are aimed to hold the focal point in the economy. They are developed in important production and service fields and aimed to build these into strong corporations in such fields as petroleum, aviation, electricity, railway, telecommunication, chemical, construction materials, banking, insurance, etc. However, there has been an attempt to change the management manner in such SOEs, that is clearly distinct the rights of the owner (the state) and ensure the autonomous rights of the enterprises, equal competition before the law compared with other enterprises of other sectors is respected; state subsidy for the enterprises is demolished. In terms of the rest SOEs, the state aim to equitize them to allocate more capital and ensure the effectiveness of production and business activities. Collective economy is encouraged to develop in various forms to focus on production or service running to expand their production and business scope to suit with the industrialization and modernization process.

As the result, there has been a change in the work force. A large number of the workers have been shifting from public sectors to private sectors as mentioned in Chapter I of this research. There are number of reasons why the operation of Trade Union in Vietnam before "doi moi" was not suitable with the "doi moi" context. *First,* that was the deep interference between the CPV and the Vietnam Trade Union, in which there had been no distinction between the CPV and Vietnam Trade Union since it also involved in examining, monitoring the activities of CPV and even in dismissing CPV members, acting as the organ of the CPV operating among the workers. The Unionists were nominated by the CPV, not by the Unionists and workers themselves. They did not have to be responsible on their work in front of the workers themselves nor felt the need to attach with the interests of the workers. Hence, they, the Unionists were not the representatives of the workers. They did not voice the wills of the workers. In addition, agenda was devised by the CPV, and so did the operation of Vietnam Trade Union was directed by the CPV. Hence, the workers did not feel the need to attach their interests with the Vietnam Trade Union. It was not considered the organization of the workers but the copy of the CPV. Also, since the operation of Vietnam Trade Union was directed under top-down shape from the CPV there had been no democratic, hardly initiative ideas which could only arise from the workers themselves during the production activities. *Second,* Vietnam Trade Union at that

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time also involved in state management-like authority bodies. During such performance they were entitled to voice their opinion but such opinion had no legal enforcement, or in other words the rights and interests of the Vietnam Trade Union were only stated generally in legal documents such as Constitution 1980, Trade Union law 1959, no detail provisions on the obligations between Vietnam Trade Union and the state agencies was devised. Hence, it may or may not be implemented depending on the attitudes of the leaders of authority bodies. With such characteristic Vietnam Trade Union had become far from the workers with bureaucratic working manner like CPV and other administrative bodies at that time. Such characteristic was similar among the socialist Trade Unions in the world at that moment. The collapse of Soviet Unions had led to the collapse of series of modes of socialist Trade Unions in these countries. This required the reform of Vietnam Trade Union if they did not want to follow this failure.

The reform of Trade Union operation in the current period is an objective needs arising from the Trade Union its self. This firstly requires for each Unionist changing his thoughts and ideas as well as the operation manner, getting rid of dogma working manner in the past, which is not suitable with the present. Trade Union of all levels should actively seek for new methods, especially they should aware of selecting activities suitable with specific situation, not involving in every issue but getting ineffective results. (VGCL 2004: 40)

Vietnam post “doi moi” has led to the change in terms of workers’ rights. *First,* to develop the national economy Vietnam has acknowledged the existence of all economic sectors, recognize the fact of exploitation and the difference between the rich and the poor in the society, but protection the interests of the workers is also paid attention as affirmed in the Resolution of the Congress VIII of the CPV in 1996. The CPV later on also acknowledge the globalization is unavoidable and objective trend, which entails the dependence among national economies and the unfair dominance of the North, including TNCs:

> Economic globalization is an objective trend, involving countries, in most of fields. It on one hand push up cooperation, but on the other hand it increase the pressure on competition and the dependence among different economic system”; “economic globalization and international economic integration is a

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> process of cooperation and development and complicate struggle as well, especially the struggle of developing countries to protect their interests for an equal international economic order, against unfair dominance of powerful countries and TNCs (CPV 2001: 2)

Second, as the result of economic reform and integration in the game of economic globalization, which has led to the blooming of private sectors, including foreign invested enterprises and units that have attracted the attention of TNCs to invest in Vietnam as mentioned in the chapter I, where the workers are likely to be overexploited by the employers including TNCs regarding wage, working hours, working condition, discrimination regarding employment, etc. Meanwhile, earlier Vietnam had no legal framework to deal with such labor relation to protect the rights of the workers. On the other hand, economic globalization also created the chances for the local workers to access advanced technology. New forms of economic production and business types have been established such as telecommunication, electronics and so on in addition to the traditional types- mining, transportation, construction and so on. As the result, there have been a various types of workers representing different types of economic production and business.

Third, the diffusion of cooperation between Vietnam Trade Union with the global Trade Union movement[6] in terms of job, wage, labor protection, social welfare, technology, female laborer, combating against social evil, poverty reduction, negotiation, collective bargaining, and so on in response to economic globalization that has pushed up the need for Vietnam Trade Union to promote its role in protecting workers' rights under the view of international standards: "Vietnam Trade Union aim to mobilize mass laborers for peace, social welfare, democracy; developing economy go hand in hand with social development; establishing stable relations in the world market for mutual interest and equality and for the better life of the laborers. Globalization must be controlled to maximized eliminate its negative factors. (VGCL 2003: 17). The strategy of Vietnam Trade Union so far in response to the TNCs

[6] "Vietnam Trade Union has become member of WFTU in 1949 and had relationship with 100 international organizations from 90 countries in the world including more than 20 NGOs and ILO and ICFTU, and its affiliate- GUF" (VGCL 2003 : 84).

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operating in Vietnam is to push up the social cooperation with them instead of acting as the defender of the workers opposing the employers.

Fourth, the rejoin of Vietnam to ILO, which has led to the milestone in the change of domestic legal framework on workers' rights and Trade Union rights under international labor standards.

All of these facts have led to the change of legal framework on workers' rights and the role of Trade Union. A series of laws and policies have been devised to govern labor relations and Trade Union embodying the commitment of Vietnam authority bodies in respecting workers' rights and Trade Union rights. The first legal document needed to be mentioned is Trade Union law 1990, replacing the law in 1959, with better specifying rights and obligations as well as the status of Vietnam Trade Union. Later on in 1992, the new Constitution has been approved, in which the status and rights and obligations of Vietnam Trade Union has been reaffirmed in article 10 "Trade Union is the socio-political organization of the working class and laborers, caring, protecting rights and interests of the laborers". Especially, in 1994 with the lobbying and assistance of the International Labor Organization a new Labor Code was devised[7], in which worker's rights Trade Union rights under international standards such as right to work; non discrimination in employment; right to work in safe environment; right to enjoy social insurance; labor protection; right to rest and leisure time and working hours; favorable rights particularly for female workers such as maternal leave, collective bargaining, labor dispute settlement, etc have been acknowledged. However, challenges of economic globalization have put pressures on the Vietnamese State and the Trade Union, hence, the implementation of such rights is different in practice[8]. Moreover, with the presence of TNCs in Vietnam recently CSR has been mentioned here and there. But, it is not as strong as in other countries at least in the region since such issues are still considered very new in Vietnam including the Unionists though evidences of TNCs exploiting Vietnamese labor's rights have been claimed such as the case of Nike in Vietnam.

[7] The Labor Code of Vietnam in 1994 was supplemented and amended in 2002.
[8] For more information regarding the exercising of workers' rights and Trade Union's rights see chapter IV.

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Additionally, Vietnam has just ratified four of eight core Conventions of ILO and has not become the member of WTO. However, the CSR and Code of Conduct are considered very new issue in Vietnam and the understanding of it is vary among the relevant parties either the state authority bodies or the Trade Unionists and enterprises. Therefore, until now the implementation of CSR, especially in the name of the Code of Conduct has been implemented in some TNCs and its affiliates in Vietnam such as BP Vietnam and only the small number of enterprises (16) in Vietnam of garment and textile, bags and toys have got the certificate of SA 8000. Moreover, such passive behaviors of the TNCs and its affiliates in Vietnam towards CSR is in many case lack of strategic plans but only following the foreign buyer's requirements in a certain times. For the local buyers they are still lack of awareness and actions regarding CSR, hence, in many cases the exploitation of TNCs in Vietnam has not received the response of the local consumers.

As mentioned earlier Vietnam now is following the marketing economy under socialist orientation as stated in the ideas and policies of the CPV as well as legalized into 1992 Constitution. Therefore, the Vietnam Trade Union has to operate with the inheritance from the socialist mode Trade Union in the past in addition to the adaptation of the new socio-economic and political context. This adaptation can be seen clearly through the three major functions of the Vietnam Trade Union. Under Trade Union law 1990 and Trade Union Constitution 2003 the major functions of Vietnam Trade union are: i/ to represent, protect rights and interests of workers; ii/ to communicate for the laborer on their rights and obligations; iii/ to involve in the state management.

Among the three functions to represent, protect rights and interests of workers is the most important. The two following functions of Vietnam Trade Union are to support the first function. Hence, one of the most important reform of Trade Union in Vietnam to adapt with the new economic globalization context is the emphasizing the importance of the function- to represent, protect rights and interests of workers. This can be considered the integration of Vietnam Trade Union into the globalized Trade Union movement in the world.

There is one interesting thing here is that before "doi moi" Vietnam Trade Union was only the organization of the workers working in state agencies and SOEs.

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After “doi moi” it is the first time do the workers working in private sectors are entitled to become members of Trade Unions as well as being represented and protected rights and interests by the Vietnam Trade Union. And protecting rights and interests of the workers is the most important function of the Vietnam Trade Union which is applied for workers who are working in different types of enterprises and agencies with no distinction whether they are the members of the Trade Unions or not. This feature is different to other Trade Unions in the world, which mostly represent and protect rights and interests for workers who are their members.

In addition, such feature may create a chance for Vietnam Trade Union to mobilize a large number of workers under their operation. But, together with that it may also be the obstacles if the Trade Union could not work actively and still maintain the hierarchy and bureaucratic manner like in the past. (More information on the role of Vietnam Trade Union in protecting worker’s rights in private sectors is discussed in following chapter).

Communist ideology preservation and integration of the globalized Trade Unions movement regarding the transformation of Vietnam Trade Union and the occurring of such transformation compared with the economic reform can be seen via analyzing such major issues as the relationships between Vietnam Trade Union with CPV and the State; regulations and mechanism operation of Vietnam Trade Union in the new context, especially Trade Union at grassroots level; and the change on working manner of Unionists;

Relationships between Vietnam Trade Union and the CPV

In the relationship between Vietnam Trade Union and the CPV it is known that the CPV is the leading force of the Trade Union. It means the Trade Union has the task to implement ideas and policies of the CPV since ideas and policies of the CPV always convey the most; involving in constructing CPV.

In the view of the members of CPV and the Unionists the leading role of CPV on Vietnam Trade Union is accepted and considered unavoidable fact since they claim that this leadership has undergone a long history, and attached with the development of the workers movement in Vietnam, especially in the cause to gain independence for the country and since then continue to realize the aim to make the worker’s class to

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become leading force of the society. "The Trade Union can not lack the leadership of the CPV since the CPV compose the most advanced and active force. Such leadership is not by accident and in authoritarian manner but it has been formed in the revolution involvement of the worker's class and Vietnam Trade Union" (Trade Union University 1999:37).

> The leadership of the CPV is a sine qua non and promising every success since the CPV is the only organization capable for devising proper ideas and policies; and direct and coordinate activities of all organizations in the political system, guiding their operation, including Trade Union operation to implement the common aim of the worker's class, of the whole nation to create the comprehensive strength in gaining and maintaining power and build and protect the country. (Institute of Worker and Trade Union Movement 2005:19).

The field research findings show that when mentioning to this issue the Unionists did not view their own opinion but only point out general accepted reasons that it is because of the socio-historical facts, implying the advantages of Vietnam Trade Union of status under law compared with other Trade Unions in the world.

The relationship between CPV and Vietnam Trade Union is inter-related. Vietnam Trade Union is the actor which communicate ideas and policies of the CPV on their members and workers; voicing the wills of its members and workers to the CPV; recommending its members to work in CPV. On the other hand, in such relation the CPV also has the task to respect the independence of the Trade Union mechanism and operation.

> Such independence means the Trade Union devises mechanism and operation under its Constitution and in accordance with the Constitution and Resolutions of the CPV. It is needed to avoid wrong thought that the leadership of CPV on the Trade Union is the direct interference on the work of the Trade Union. The CPV does not nominate its staff to work for the Trade Union but it only recommends its qualified members to be elected by the Unionists in the Trade Union congress. (Trade Union University 1999:38).
>
> At its IX congress the CPV has reaffirmed:
>
> Mass organizations have very important role in the cause of uniting people to build and protect the country; bring into play master's rights and obligations of

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> the people, strengthening the relationship between the people and the Party and the State, exercising the monitoring of the people on activities and morality of the Party members, state officials and members of elected bodies and state agencies; settle disputes in the society (CPV 2001: 45)

It can be seen that though attempting to run a socialist marketing economy is the compulsory cause to follow as recognized the CPV together with the extensive globalization trend in the world the leadership role of CPV on Vietnam Trade Union has been aimed to fasten more than ever since Vietnam Trade Union is considered the representative of mass of the working class and laborers. To maintain the leadership status of the CPV in the society, to ensure that the operation of the working class and laborers is occurring under the socialist oriented way as well as under the control of the CPV maintaining such role in the Trade Union is the important concern of the CPV so far. That is the main reason for the CPV leadership on the Vietnam Trade Union not because of the claim that the leadership of the CPV is *"a sin qua non and promising every success"* as claimed by some Unionists not very idea and policy of any ruling party in the world is proper and leads to success. This can be proved from the collapse of the Soviet bloc ideology. And that if the rest socialist countries such as China and Vietnam would not have conducted their reform economically and politically, such leading role of the Communist Party were not sure to be maintain in the State and society.

So far the CPV has been implementing its leadership through its Party groups existing in the mechanism of the Trade Union, wherein tens of thousands of Unionist concurrently being Party members are working in Trade Union at all levels. "The number of Unionists who are Party members account for 74.19 percent" (Thang, Nguyen Dinh 2004: 4). Training on the Party ideas and policies have been paid attention on these Unionists to ensure the compliance of the Unionists on the role of the CPV in leading state and society, specifically leading the Trade Union and that ideas and policies of the CPV to be implemented strictly during the performance of Trade Union. In addition, to ensure the ideas and policies to be implemented by the Trade Union the CPV has been lobbying it via its recommended CPV members working for the Trade Union. So far the persons holding focal post in Trade Union mechanism have always been Party members. At the central level they are members

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of Politburo of the CPV; at local level they are members of the executive board of the CPV of same level.

The CPV also frequently conduct monitoring and evaluating the implementation of Trade Union on ideas and policies of the CPV; and directing the activities of Vietnam Trade Union. Such monitoring activities have been conducted via Party groups operating in the Trade Union mechanism; periodically receiving the reports of Party members who are holding focal posts in the Trade Union mechanism on the implementation of tasks asked by the Party in the Trade Union.

The manner of leadership of the CPV on Vietnam Trade Union is very important to the existence of the both organs since it attach with the strategy to build a working class under socialist ideology, in which there shall not be a strong communist party if the trade union is weak and vice versa. Realizing this since "doi moi" there has been the needs to reform the mechanism of the whole political system including the CPV and the Vietnam Trade Union to adjust with the economic globalization context, in which it is unable for the CPV to lead the Trade Union under dictatorship and bureaucratic manner if the CPV still want to maintain its actual leading role in the society. In turn the Vietnam Trade Union can not just wait for the instruction orders coming from the CPV if it still wants to maintain its existence in the eyes of other political institutions, especially the CPV and the State and the workers. The new rational requires the Trade Union to be creative in performing its tasks to really represent the wills and interests of the workers.

> The CPV at all levels must respect the independence on mechanism and operation of mass organizations, encouraging the creativeness of these organizations in implementing revolutionary task. Mass organizations have to reform quickly contents and manner of operation to suit with the socio-economic reform process. Trade Union should shift their focus on the grassroots level, attracting mass people to involve in the revolutionary movements (CPV 1987:115)

Therefore, the independence of Vietnam Trade Union has been acknowledged by the CPV to avoid the interference of the CPV into the affair of Vietnam Trade Union as well as to promote the creativeness and effectiveness of the Trade Union in performing its rights and obligations to catch up with the new context. However, in

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practice it is clearly seen that the ideas and policies of the CPV, especially to ensure the independence of the Vietnam Trade Union have not been implemented in uniformity among the CPV mechanism itself. The interference deeply into the operation of the Trade Union is still occurring at all levels, for example, there still exist involvement of the CPV of local levels into operation of grassroots Trade Union operating in private sectors, especially in foreign invested enterprises in some areas, meanwhile in other areas "there exist some CPV of local levels involving too deeply in selecting Trade Unionists even the security guards in Trade Union organization" (Institute of Worker and Trade Union Movement 2004: 17)

Relationship between Vietnam Trade Union and the State

Since Vietnam is a country following socialist orientation. The relationship between Vietnam Trade Union and the State in nature does not look like other countries. Here, Trade Union is not considered the defender, or an opposite party in front of the State. Because of political characteristic the Vietnam Trade Union has a very close and inter-related relationship with the State. It is acknowledged formally under relevant legal documents such as Constitution 1992; Trade Union Law 1990, and other by law documents, especially the Regulation on cooperation between the Government and VGCL in 1994. It enable the State to consolidate their power in the country through communicating laws and policies of the State; recommending its staff to work for the State agencies such as the NA members, having representative Trade Union in all state organs; it act as the advisory for the State in devising laws and policies regarding labor issue.

"VGCL is entitled to nominate its representatives to involve in inspector team on the compliance of laws and polices regarding the interests of workers organized by the Government or ministries, agencies of equivalent ministries, agencies under Government" (article 4 of Regulation between the cooperation between the Government and Vietnam Trade Union); recommending its candidates to involve in authority bodies (People's council, NA).

Moreover, it is claimed that since Vietnam is following the socialist orientation our State is a State of the people, because of the people and for the people under the leadership of the CPV it is necessary for the Vietnam Trade Union acting as the

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representative of the workers to involve in the monitoring, and management of the State. Contribute to promote the involvement of Vietnam Trade Union in monitoring, and management of the State following the Order No 30CT/TW of the CPV in 1997, two years later in 1999 the Government has devised Grassroots Democracy Decree operating in state agencies and SOEs, which stating the rights to heard, right to discuss, and right to decide of the laborer and responsibility of the Trade Union in implementing, monitoring the implementation of the Decree. This Decree contribute to implies the recognition of democratization and direct master right of the workers in the state agencies and SOEs, and the role of Trade Union in realizing such rights. Vietnam Trade Union at all levels has implemented the Grassroots Democracy Decree to realize the master's rights of the workers and Trade Union's rights in enterprises and Units, mostly of public sector. However, the exercising of such Decree remains very weak. Mostly it has been conducted under formality manner, for example, there are many cases in "SOEs the collective agreements have been made not under the consensus of the workers themselves in their respective enterprises but copying from other Units" (VGCL 2005: 90). Until now such Decree has been established in 70-80 percent of the SOEs; in state agencies, however, the implementation effectiveness is low and only in name in most of the cases. Therefore, the laborers have not created rooms to involve in direct discussion and decision as well as monitoring the implementation of policies on management as well as policies on labor in the scope of their respective agencies. According to VGCL "Some enterprises and Units of Private sectors have voluntarily implement the Grassroots Democracy Decree through organizing meetings among the workers, signing collective agreements, devising labor regulation in their enterprises and units" (VGCL 2005: 87), however, no data regarding these enterprises and units have been worked out.

The significance of the Decree has not been paid much attention. Major reasons for this can be: i/ General provision of the Decree with no detail sanction for violators; ii/ weak communication of the Decree that has led to the improper understanding of the workers regarding their rights and interests under the Decree.

The State is responsible for creating favorable conditions for the Trade Union to operate such as financial assistance, creating rooms for Trade Union to perform its tasks, protecting legitimate rights and interests of the Trade Union. In addition, it

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monitors the implementation of the Trade Union on ideas and policies of CPV as well as monitor the compliance of laws during the performance of Trade Union, etc.

Under the Regulation on cooperation between the Government and VGCL it can be seen such cooperation has been governed more specifically than in the past, especially article 2 states that when drafting legal documents, ideas and policies regarding labor issue, wage, labor protection and other social policies directly related to rights and interests of the workers the involvement of Trade Union in voicing their opinion related to these draft is compulsory.

Under article 9 of the Regulation it can be seen the cooperation between VGCL and the Government arises from equal status. It means VGCL is considered an equivalent partner of the Government, not a junior organ of the Government:

> President of VGCL is invited to attend meetings of the Government to settle issues directly related to rights, interests and obligations of the workers and officials or operation of the Trade Union; Prime Minister or members of the Government is invited to attend meeting sessions of the Presidential board or executive board of VGCL when discussing on issues related to life and work of the workers and officials. Annually (or when deeming necessary) the Prime Minister and President of VGCL organize inter-meetings (or meetings) to discuss on necessary issues arising in the cooperation relationship between the Government and VGCL.

However, such positive signs stated in above mentioned article of the Regulation is limited when stating VGCL is entitled to devise inter-ministerial documents with the ministerial level partner under law on devising legal documents to govern labor issue. This has led to a misunderstanding that the VGCL is considered a ministerial equivalent agency, a junior agency compared with the Government. In addition, under article 35 of Trade Union Constitution 2003 the Trade Union has its own financial budget comes from different sources such as from membership fees, business activities, project implementation, etc. However, under article 6 of the Regulation on cooperation between the Government and VGCL in 1994 it is stated:

> Annually VGCL design plan on revenue and expense of the Trade Union budget to send to Ministry of Finance and the State planning Committee, Ministry of Finance and the State planning Committee are responsible to report to the

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Government Prime Minister. When deeming the revenue of VGCL is not enough for expense for necessary items the State shall consider to partial support.

All of these have caused the dependence of the VGCL on the Government, limiting the cooperation nature between them and affecting the voice of VGCL in the meetings with the Government, especially with the Government Prime-Minister as stated in foregoing article 9 of the Regulation on cooperation between the Government and VGCL. Moreover, it also create the inactive of VGCL in terms of seeking financial budget to run its obligations since there is a big donor-the State to support when its budget is not enough for expense. This provision has not created favorable room for the VGCL to develop compared with the world Trade Union movement in the context full of cooperation and challenge of globalization.

What is the relationship between the CPV and the Vietnam State?

In the relationship between the CPV and the Vietnam State the CPV is considered a leadership force of the State. Such leadership is formed and consolidated to govern and control the operation of the State organs from legislative body (the National Assembly) to executive body (the Government) and the Judicial body (People's Courts and People's Procuracy) from the central level to local levels under the ideas and policies devised by the CPV.

Such leadership include: i/ the ideas and policies of the CPV such as the ideas and policies of the CPV Congress, central Resolution, decisions of Politburo and Directives of the Secretariat board shall be the principles of State operation; ii/ Laws and policies of the State is the codified and institutionalized ideas and policies of the CPV. In the Foreword of Constitution 1992 affirms that "it institutionalizes the relationship between the Party as leader, the people as master, and the State as administrator"; iii/ criteria for electing, recruiting, promoting and so on the staffing of the State from the central level to local levels, especially those whom hold focal point in the State agencies of all levels must be decided by the CPV. In addition, the CPV recommend its members to be elected at representative bodies such as National Assembly and People's councils of all levels and other important positions in the state mechanism from central level to local levels such as State President, Prime Minister, and so on; and, members of the party groups in the State mechanism have

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responsibility to implement the CPV ideas and policies in their respective organizations and be the key forces in codifying ideas and policies of the CPV into laws; iv/ the leadership manner of the CPV is conducted through its mechanism from the central level to the local levels. At the central level there are various bodies of the CPV such as Central office, CPV departments, and so on to manage the activities of the state bodies at central level and at the local levels there are equivalent bodies of the CPV manage the activities of the state bodies at the same levels. v/ arms forces are under direct leadership of the central military body and Central police body of the under the authorized bodies of the CPV. These two bodies are responsible for recommending strategies and tasks of military and defense and security of the country for the authorized bodies of the CPV to decide on.

Regulations and operational mechanism of the Vietnam Trade Union in the current time

As the result of reform major regulation that the Trade Union in Vietnam follows is democratic concentration in running its mechanism. That means: i/ management boards of Trade Union at all levels are elected by voters; ii/ the highest power of Trade Unions vested in the Trade Union congress of the same level; iii/ Executive boards of Trade Union at all levels operate under the regulation of collective leadership, headed by individuals, minority complies with majority, lower level complies with upper level, individual complies with the organization; iv/ resolutions of Trade Union of all levels are approved under majority vote; v/ the Trade Union of upper levels directly nominate temporary executive board of Trade Unions at lower levels when they are established or reorganized.

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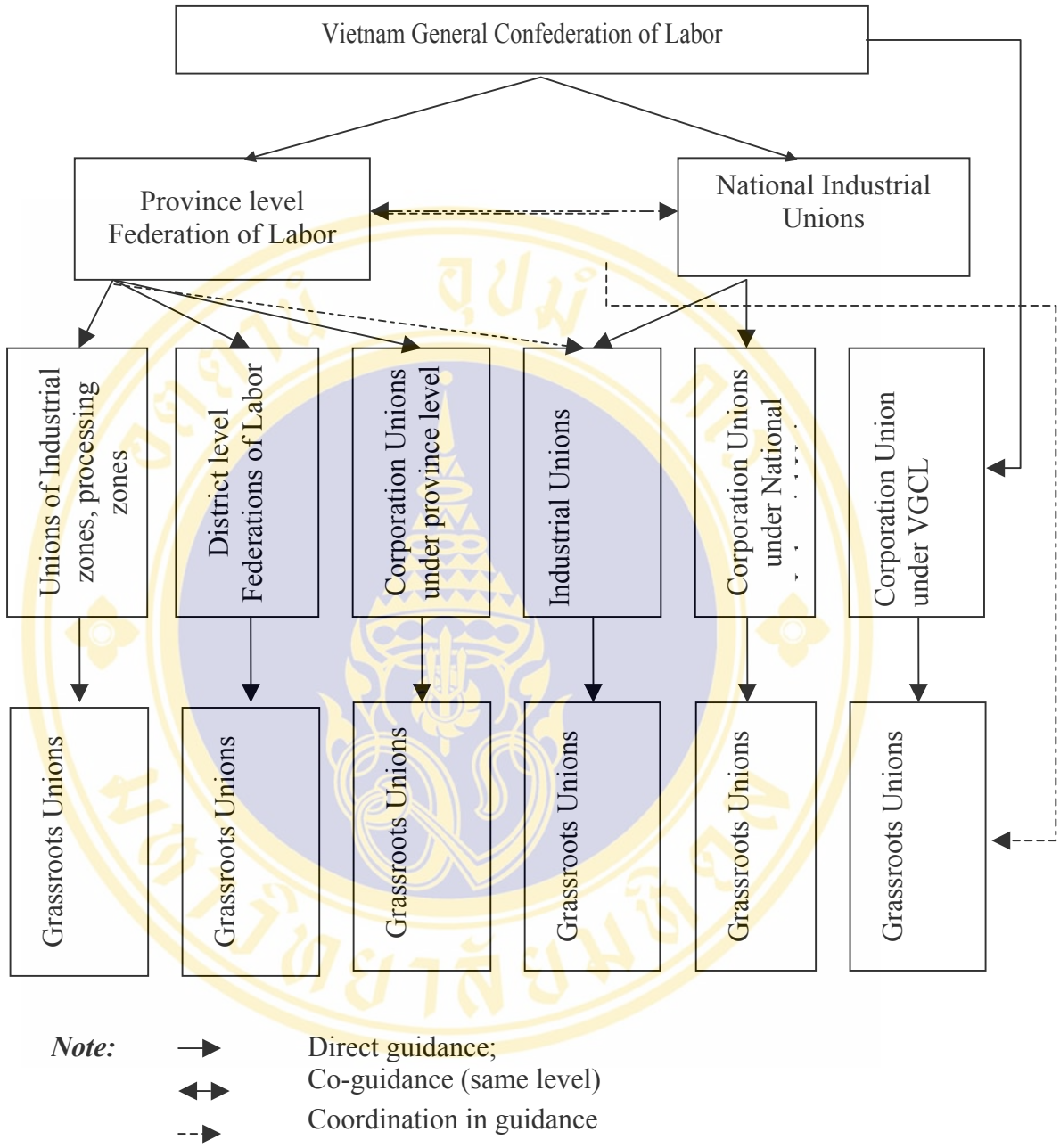

Figure 2: Organizational structure of Vietnam Trade Union

The figure 2 shows that in Vietnam there is a sole and unified trade union. It is organized in a rather complicate way in the four major levels. At the central level it is VGCL; the lower level is National Industrial Unions and Labor Federations in Cities and Provinces under Central Government known as province level Labor Federations.

National Industrial Unions include 16 Units operate in national sectors and ministerial level agencies, for instance, Education Union; Transportation Union,

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Medical Unions, Petroleum Union and so on. They are established and dismissed under the decision of the Presidential board of VGCL, having major tasks as prescribed in article 26 of Trade Union Constitution 2003 such as: i/ to communicate laws and policies of the CPV, state and Vietnam Trade Union; ii/ protecting rights of its members and other workers and laborers including public servants in their respective sectors; iii/ involving in state management and participate in devising policies in their sectors; iv/ recommend the VGCL on the operational structure of their mechanism, detailing functions of units under their management; v/ directing Units under its management and cooperate with Labor Federations of province level to direct and manage the operation of Industrial Unions operating in the respective provinces.

Labor Federations at province level is equivalent to the National Industrial Unions, operating under administrative divisions[9]. They are established and dissolved under the decision of the presidential board of the VGCL under Trade Union law 1990 and having major tasks as stated in article 28 of Trade Union Constitution 2003 as follows: i/ communicate ideas and policies and laws of the CPV and the State and Vietnam Trade Union; ii/ represent and protect lawful rights and interests of the workers in the respective provinces; iii/ involving with the province level CPV and state authority bodies in devising ideas and socio-economic development plans as well as other issues regarding workers in their respective provinces; iv/ cooperating with competent authority bodies and National Industrial Union in conducting monitoring and examining the implementation of policies and laws regarding the workers in their provinces; involving in the local board of referees, directing the settlement of labor dispute and involve in inspecting labor accidents in the provinces; v/ direct the local Corporation Unions (established and managed by the authority bodies of provinces) and Industrial Unions to implement their tasks; vi/ direct local Unions under the Corporation Unions (established and managed by central level authority bodies) and Industrial Unions under the National Industrial Unions which are operating in the respective provinces on the implementation of ideas and policies of the CPV, plans on socio-economic development and security and defense; cooperating with the competent

[9] There are 64 Labor Federation at province level in 64 provinces and cities under central management.

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bodies to examine and investigate labor issue, labor accidents, settling petitions and complaints on labor, labor disputes; representing the laborer before the employers and competent state bodies in the proceedings of labor dispute settlement; monitor and examine the implementation of policies and laws regarding the workers under their competence.

The lower levels are district level Labor Federations, Unions of Industrial zones, processing zones, Corporation Unions under province level, Industrial Unions, Corporation Unions under National Industrial Unions, and Corporation Unions under VGCL.

District level Labor Federations are established, dissolved as well as managed by Province level Labor Federations, having major tasks as prescribed in article 22 of Trade Union Constitution 2003: i/ communicate ideas, policies and laws of the CPV, the State and Trade Union; ii/ implement Resolutions and policies of the Province level Labor Federations, CPV and Resolutions of their Labor Federations Congress at the same level as well as involve with the CPV and local state agencies in devising socio-economic development and other issues regarding the workers; iii/ cooperating with competent authority bodies of district, local Industrial Unions, Corporation Unions to monitor and examine the implementation of policies and laws regarding the workers, settling petitions and complaints and other labor disputes occurring in their respective districts; iv/ conducting the development of Union memberships and establishing grassroots level Trade Unions in the districts.

Industrial Unions are established and dissolved after granting the approval of the National Industrial Unions. They operate under the direct management of the province level Labor Federation together with the sectored management of the National Industrial Unions, and having major tasks as prescribed in article 21 of the Trade Union Constitution 2003 such as: i/ implement ideas and policies of the province level Labor Federation and the National Industrial Unions as well as the Resolutions of the Trade Union Congress at the same levels; ii/ involving with the authority bodies of the same levels on socio-economic development of their sectors and other issues related to interests and tasks of their sectors; iii/ cooperating with the district level Labor Federation in directing and examining the implementation of ideas and policies of their sectors and protecting lawful rights of the workers in their

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respective sectors; iv/ developing memberships and grassroots Trade Unions in all types of enterprises and units related to their sectors.

Unions at industrial zones, processing zones and high-tech zones known as Unions at industrial zones are established and dissolved and managed directly by the province level Labor Federations, and having major tasks as stated in article 23 of Trade Union Constitution 2003 such as: i/ communicate ideas and policies of the CPV, laws of the State and tasks of the Trade Union and ideas and policies of the Trade Unions of the upper levels and implement ideas and policies of the CPV, laws of the State, Resolutions and ideas of Trade Unions at upper levels as well as the Resolutions of the Union Congress at the same level; ii/ cooperate with competent bodies to examine and monitor the implementation of policies and laws on labor issues, settling labor dispute and petitions and complaints of the workers in their respective industrial zones; iii/ direct the grassroots Unions to sign collective bargaining agreements, involving in devising labor regulations at their enterprises, establishing labor boards of referees at grassroots level, and settling labor dispute; iv/ developing memberships and establishing grassroots Trade Unions under Units established by the local competent bodies operating in the zones; v/ direct the grassroots Trade Unions under National Industrial Trade Unions and Corporation Trade Unions under central level management operating in the zones.

Corporation Unions are divided into three categories types depending on the actors establishing the Corporations. If the Corporations are established by the People's Committee of province level the Corporation Unions are established and managed by the province level Labor Federation; if such Corporations are directly established by the Ministries such establishment and direct management competence belong to the National Industrial Unions; for the Corporations established by the Prime Minister such establishment and direct management competence belong to the Presidential board of VGCL. Under article 24 of Trade Union Constitution 2003 major tasks of the Corporations include: i/ communicate ideas and policies of the CPV, laws of the State and tasks of the Trade Union and ideas and policies of the Trade Unions of the upper levels and implement ideas and policies of the CPV, laws of the State, Resolutions and ideas of Trade Unions at upper levels as well as the Resolutions of the Union Congress at the same level; ii/ involve with the administer

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board and general director of the Corporations on the economic development plans of the Corporations, involve in devising and monitor the implementation of the provisions regarding lawful rights and interests of the workers in the Corporations; iii/ cooperate with the administer board and general director of the Corporations to implement Grassroots Democracy Decree, representing the workers to sign collective agreements in the Corporations; iv/ establish and dissolve direct grassroots Unions as well as direct these Unions in implementing their tasks.

Grassroots Trade Unions operate in enterprises of different types, cooperatives, state offices and political organization offices (CPV) and mass organization offices (Women's Unions, Youth Unions, Fatherland Front and so on). Major tasks of these Grassroots Trade Unions differ depending on the type of sectors they are working. For example, under article 16 the major tasks of the Unions in SOEs include: i/ communicate ideas and policies of the CPV, laws of the State and tasks of the Trade Union; ii/ cooperate with the SOEs directors to organize the implementation of Grassroots Democracy Decree, representing the workers in their respective enterprises to sign collective agreements and guide the workers to sign labor contracts; nominating their representatives to involve in the boards to settle issues regarding workers' interests, involving with the directors to seeking ways to ensure the stable work for the workers, improving working conditions and incomes for the workers; iii/ examining and monitoring the implementation of laws and policies, investigate and involving in settling labor disputes; communicate to develop Trade Union memberships.

Tasks of grassroots Trade Unions in enterprises and units of private sectors as set in article 18 of Trade Union Constitution 2003 include: i/ communicate ideas and policies of the CPV, laws of the State and tasks of the Trade Union; ii/ guiding the laborers to sign labor contract with the employers; iii/ representing the worker teams to sign collective agreements with the employers and monitor the implementation of policies and laws regarding the laborers as well as the implementation of the collective agreements; iv/ represent the worker teams to involve in local conciliation board and settling labor disputes under provisions of law; cooperate with the employers to improve working conditions for the workers; communicate to develop Trade Union memberships.

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In the past few years VGCL has paid attention to increase the number of memberships in Trade Union for better implement its functions in the new context.

It is necessary to focus on the Trade Union at grassroots level; actively involve at grassroots level to communicate, mobilize and protect legitimate rights and interests of the workers; On the other hand , the Trade Union should well-implement the role to monitor with the State because of the interests of the working class, involve in constructing the Party and the State.(VGCL 2004:40).

Series of strategies have been devised such as Resolution No 3b in 1999 on pushing the membership and building strong Trade Union at grassroots level; Resolution No 05 on building Trade Unionist contingent in the new context; Circular No 02 on building strong Trade Union at grassroots level and Trade Union of Corporations. As the result the number of memberships and Trade Union at grassroots level have increased.

Table 2: The development of Trade Union membership and Trade Union at grassroots level in Vietnam in the past 10 years

Criteria	1993	2003	Increase
Total No of TU membership	2,996,178	4,300,867	1,303,867
State sector	2,903,154	3,387,185	401,007
Private sector	93,024	902,868	809,836
Total No of Grassroots TU	24,896	61,563	36,667
State sector	24,489	50,993	26,504
Private sectors	407	10,570	10,163

(*Source: VGCL 2004).*

The table shows that from 1993 to 2003 the number of Trade Union Memberships increased in both state sector and private sectors together with the increase number of Trade Union at grassroots level. However, the percentage of workers working in private sectors being the memberships of Trade Union is too small (902,868 persons) compared with the development of the workers in these sectors (which are estimated to provide jobs for around 60% of the workforce in the country as mentioned in chapter I of the research). This of course will affect the

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implementation of workers' rights protection task of the Vietnam Trade Union. In response to this, the aim of developing members of Trade Unions initiated by the ninth Congress of The Vietnam Trade Union from 2003-2008 is:

> In the next five years at least one million persons will be members of Trade Union; at the end of 2008 attract all civil servants to become members of Trade Union; at least 95 percent of laborers in SOEs and 60 percent in enterprises of other economic sectors eligible to establish Trade Union to become members of Trade Union; by the year 2008 there shall be 100 percent of SOEs, state agencies; 70% units of other economic sectors establish Trade Union at grassroots level, in which 75% of those whom in public sectors rank strong and stable Trade Union and over 40% at other economic sectors.
>
> According to the plans of 76 Federation of Labor at province level, Trade Unions of central Unit and Trade Union of Corporations under VGCL in the period 2003-2008 there shall be 1,424,594 new Trade Union memberships. Up to now according to the reports of 50 Units there have been 1,424,594 new Trade Union memberships, accounting for 110.6 percent of the national plan, 125.61 percent of the plans of these 50 Units (VGCL 2005: 35)

However, the field findings have shown that such strategy of Vietnam Trade Union on increasing the number of Trade Union memberships focus on the quantity more than quality[10]. It means there is the fact that a lot of workers have become members of Trade Union as the obvious compulsory obligation when they are recruited in their respective companies. As the result they do not aware on the role of the Trade Union, especially at their companies. They have not either felt the necessity of the existence of Trade Union, or the need to attach their interests with the Trade Union especially at grassroots level which are working close to them. This is popular in enterprises of private sectors. For example, Q. a 25 years old woman with 3 years working experiences as marketing specialist at an multinational company on energy industry with 100 percent foreign investment. In Vietnam it has about 500 workers in three areas-Hanoi, Ho Chi Minh city and Vung Tau. She said:

[10] For more information on this issue see chapter I

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> We have two Unionists nominated by Petrol Vietnam, not by the workers our shelves in the company. When I joined the company I was introduced to them (at first I work in Ho Chi Minh city branch together with them that is why I knew them) that if having any problems can I go to these people. We all are members of Trade Unions and our company pays Trade Union membership fees for us but not many of us know about these Unionists because they only work in Ho Chi Minh city and we still have two other branches.

Change on working manner of the Unionist

One of the fundamental rule for the working of the Vietnam Trade Union is persuading since the Trade Union is the organization in which the people can voluntarily join the Trade Union and contribute their effort to the existence and development of Trade Union. This has been reaffirmed in the sixth, seventh and eighth Congresses of the Vietnam Trade Union as one of the major cause of reform. To mobilize the workers become membership and to maintain the actual existence of the Trade Union it is required to have close relationship with the workers.[11]

Working far from the workers in a bureaucratic manner is not suitable with the current time and it is the major cause leading to the failure of Trade Union. Therefore, the manner of staff working in Trade Union should reflect such persuading regulation when dealing with the workers since it is established and developed by the workers, represent the voice and interests of the workers. Additionally, the most important task of Vietnam Trade Union is to protect rights and interests of the workers. As the result of "doi moi" Vietnam Trade Union no longer deeply involve in administrative management or the activities of the CPV like in the past it now has focused much of the attention to protecting the rights and interests of the workers.

However, the working manner of bureaucratic inherited from the central planned economy still exist. Entering the gate of VGCL I faced an uncomfortable face of one female security guard. She did not recognized me since I worked for VGCL for a short

[11] This will be further discussed in chapter IV item 4.5.

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time before I left. She asked me about my purpose to come, whom I want to visit, and so on. I explained to her about my purpose to visit, and luckily my former college passed by and asked me to follow him. Of course, it is her duty to ask me such questions but I did not expect they were asked in such an unfriendly way since VGCL is the organization of workers, a social organization, not an administrative agency. Hence, it must be close to the workers, so as to hear the voice of the workers, not in a bureaucratic manner that one often sees in many administrative agencies nowadays in Vietnam. I was told by my former colleague later on that she had to ask like that because there are workers who got sack illegally come here to voice to the president of VGCL and make noise. It also can be seen that there are workers who deeming their labor rights violated do not know the proper agency to access.

Under article 9 and article 11 of Trade Union law 1990 the Trade Unions are entitled to conduct examining on the implementation of laws regarding labor contract, wages, remuneration, labor protection, social insurance and other policies regarding rights and interests of the laborers. When conducting such examining they are entitled to request the employers and relevant parties to correct the wrong doings and prevent the illegal acts as well as settling the violators; they are also entitled to involving with the competent authority bodies to settle petitions and complaints of the laborers under provisions of laws.

According to the report of the Inspection Department of VGCL on the inspection activities of Trade Union at all levels in 2004: "The Inspection Departments of Trade Union at all levels have received 6,822 petitions and complaints letters regarding getting sack, social insurance, employment, discrimination from employers due to acting as Unionists (accounting for over 50 percent of the total petitions and complaints), violation of financial expense regulation, and so on from the workers and Unionists of which only 26.8 percent of which is under the competence of the Trade Union." (VGCL 2005: 68).

Moreover, to my observation it has been nearly twenty years since the Trade Union in Vietnam integrated into the global Trade Union movement as the result of "doi moi" or economic globalization and more than ten years cooperating with ILO, however, workers' rights under international labor standards or in other words that human rights have something to do with Trade Unions and worker's rights are still

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considered a strange thing in the view of most of the Unionists in Vietnam, particularly at VGCL.

Hence, it can be seen that though stating the willingness to reform the staffing suitable with the new current time is still limited and until when Vietnam Trade Union does not have staff contingent having background on human rights generally and worker's rights particularly under current international standards such integration is still lack behind the trend of the world.

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CHAPTER 4
ROLE OF TRADE UNION IN VIETNAM IN PROTECTING WORKER'S RIGHTS

In this chapter I will discuss on the role of Trade Union in protecting the rights of the workers working in private sectors from typical human rights of the workers under international standards such as i/ the right to work; ii/ the right to a decent living; iii/ rest, leisure and working hours; iv/ the right to safe and healthy working condition; v/ the right to organize and bargain collectively; and vi/ the right to strike.

4.1. The right to work

The right to work is one of the most important human rights of the workers. Together with other rights it is the result of struggle of workers' movement in the world to the international recognition of their rights. Until now the right to work has been affirmed in international labor standards, for example UDHR; ICESCR; the ILO No.122 Employment Policy Convention, 1964 .

The right to work includes the right of a person to the opportunity to earn a standard of his living by work either be self-employed one or waged-employed one.

The right to work means that work and access to resources are distributed in a way that allows for the participation of every one who wish to involve in the economic activities. The benefits derived from these activities must be enough to reach an adequate standard of living. The right to work does not only means that work is allowed for the participation of everyone, especially in market economy, but that it must grant his consent to involve in such activities. This consent is conditional, on the possibility to earn a living with his work.

Why the right to work is considered human right? It is argued that as long as the right to work is not considered to be a human right a considerable percentage of the community would be excluded from access to income as well as economic participation in the community. This of course would affect to other enjoyment of human rights politically and economically such as the right to life, the right to food, adequate housing, the right to social security, and so on. Though ensuring full

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employment is impossible in the current economic globalization context the ignorance of the eliminating unemployment rate of member states is the violation of the right to work under international standards.

Vietnam has not ratified the ILO Employment Policy Convention of 1964 No 122, however, it has been a member of the UN since 20 September 1977 and is bound by the UDHR[12] and ICESCR[13] it has the obligation to implement the right to work in Vietnam. The right to work has been affirmed in various legal documents of Vietnam , especially in article 55 of Constitution 1992 states that "The citizen has both the right and the duty to work. The State and society shall work out plans to create ever more employment for the working people"' and article 5 of the Labor Code 1994 states that: "Everybody has the right to work, to freely select their occupation and trade, to attend vocational training and improve their professional qualification without discrimination with respect to sex, ethnical and social origin or religious belief".

In practice it can be said that Vietnam has made great effort in ensuring the right to work for the workers under international standards through various measures such as devising favorable conditions to attract FDI, domestic investment, running job promotion centers, vocational training centers. As the result, the percentage of unemployment in Vietnam is rather low in the region despite the growing of workforce and keep on decreasing. "The total work force in the country include 43,255,300 (men: 51 percent; women: 49 percent), increase 10.02 percent compared with 2000. The work force in rural areas accounts for 75.6 percent and in urban areas-24.4 percent. The percentage of unemployment in urban areas decrease from 6.3 percent in 2001 to 5.6 percent in 2004; the use of workforce in rural areas increase by 78.3 percent compared with 74.3 percent in 2001 (Office of the CPV 2005: 2)

However, the vocational training for workers has been done not effectively. The number of workers who have not been trained account for three fourths of the total workforce. The South East region (including Ho Chi Minh city) and Red River delta (including Hanoi) are two regions having the highest

[12] UDHR though has no legal binding status it is so popular that has become a norm of reference in human rights for all state members , which allows it to be invoked both legally and politically at international and domestic levels.

[13] Vietnam acceded ICESCR on 24 September 1982.

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percentage of trained workers (in 2004: 31.8 percent and 31.9 percent). The region having lowest percentage of trained workers is the North West region- 3.3 percent in 2004. (Office of the CPV 2005: 2).

The privatization of SOEs since "doi moi" has occurred very slow. For instance, from 1992-1998 only 120 SOEs have been equitized. In 2001-2003 only 48 percent of the 2,000 set target SOEs have been equitized. Major causes are as follows: i/ the fear of losing favorable conditions granted by the State such as loan at state bank, tax, inspection and monitoring conducted by the competent bodies, and so on; ii/ in terms of the officials many fear the leading role of the SOEs in the national economy may be degraded so as the trend to socialism of Vietnam may not be realized; iii/ many directors of the SOEs do not want equitization for the fear of losing their preferable conditions such as corruption or losing their current positions; iv/ ineffectiveness of policies and procedures regarding the equitization of SOEs, for example, regarding the property evaluation of the equitized enterprises and the settlement of redundancy of workers and so on. Though occurring rather slow due to above mentioned reasons the privatization has been committed by the Vietnamese authority bodies, which, in many cases as the result of pressures pushed by the WB, IMF, ADB, the requirement of joining WTO and so on, hence, it can be predicted that such process will occur more quickly in the coming times.

In terms of the workers, since the implementation of the privatization of SOEs many workers have become jobless. "In the last reorganization of SOEs the percentage of redundant workers in the whole country in average is over 20 percent, in many enterprises this percentage is 30 – 40 percent. Meanwhile**,** lower than 7 percent of them are subject to the retired age" (Hung, Ho Xuan 2005: 3)**.** This of course has affected to the other human rights of the workers, especially regarding the right to a decent living to be discussed in following 4.2. of this chapter.

Involving in realizing the right to work is the responsibility of the Vietnam Trade Union. Such obligation is stated in various legal documents such as article 156 of Labor Code 1994 states that " Vietnam General Confederation of Labor, Trade Union of all levels are entitled to establish vocational training centers, job creation service centers"; article 2, item 1 of Trade Union law 1990 states that " Trade Union

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represent legitimate rights and interests of the workers, being responsible for involving with state agencies to develop production, job creation and improve material and spiritual life for the workers".

Pursuant to such the responsibility Vietnam Trade Union has involved actively in guaranteeing the right to work. In addition to the cooperation with relevant state agencies such as Vocational training General Department, Ministry of Education and Training to enable the workers access vocational training and educational training, the Union has established a mechanism from the central level to province level, responsible for job creation for the workers with the operation of four vocational training schools, over forty job promotion service centers, one labor export company, Labor newspaper, together with the operation of the fund providing loan for the workers to generate jobs and earn incomes:

> Job consultancy and vocational training have been provided for 81,233 persons; introducing stable jobs for 35,720 persons, provide 42,010 workers for the employers. Providing short term course on vocational training for 16,355 workers and take part in providing long term course on vocational training for 10,090 persons, taking 1,544 workers to work in abroad. Providing loan for job creation with total budget is VND 155.9 billion for 122,942 workers. (Hoc, Khuc Tien 2004: 10).

Up to now the Vietnam Trade Union has involved in the privatization process of SOEs through reorganizing the workers and granting redundant benefits for the redundant workers[14] to protect the workers' rights. For instance, in 2004 the Vietnam Trade Union at all levels have involve in the privatization of " 615 SOEs, involving in the competent boards to grant redundant benefit for more than 30,000 redundant workers with the total budget of VND 892,4 billions" (VGCL 2005: 29)

4.2 The right to a decent living

The right to a decent living has been recognized in various documents of the UN such as UDHR, ECSCR, ILO Convention No 131 on minimum wage. It includes the right of the worker to an adequate wages so that the worker and his family members

[14] Vietnam does not have an unemployment benefit policy.

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can live on at adequate standard of living, and there should be equal pay for equal work of the same value without any discrimination on the basis of race, color, sex, religion, political opinion, national extraction or social origin. The right to a decent living also requires for the minimum wage level set by the states as the precondition to ensure the right of the worker and his family can live on at a decent level.

The right to a decent living has been reaffirmed in various legal documents of Vietnam such as article 55 of 1994 Labor Code states:" Workers are paid as agreed with the employer but not lower than the minimum wage set by the State, and in accordance with the productivity, quality and effectiveness of their labor"; article 56: "The minimum wage is set under the practical living expense, enabling the worker involving in the simplest work in the normal working condition can reciprocate the simple labor capacity and partial save for reproduce the expanded labor capacity and is used as the basis for the setting of wage levels of other labor types".

However, though recognizing the setting of minimum wages under the practical living expense of the workers with the idea of caring for the workers since Vietnam is a socialist state and the workers are considered the leading force of the state power as stated in Constitution 1992 thing is not much different as seen in most other developing countries, growth and economic development will likely come at the expense of workers. To attract foreign investment, and retain a comparative advantage over neighboring Southeast Asian nations, especially in the context of "foot loose" industry, cheap wages have been viewed by the Vietnamese policy-makers as one of the advantages of Vietnam in competition with other neighbor developing countries to attract more investment to develop the economy minimum wages of the workers working in foreign invested enterprises have been reduced from US$ 50 to VND 556,000 (around US$ 35) – 626,000 (around US$ 40) per month in suburb districts and in urban districts of Hanoi and Ho Chi Minh City, and from US$ 35 to VND

487,000 (around US$ 30) per month elsewhere under Decision No 708/1999 of the Minister of MOLISA, dated June 15,199915.

[15] From July 1, 1999- the enforcement date of the Decision No 708/1999 all foreign invested enterprises have to pay the workers in VND.

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In enterprises other than foreign invested enterprises though the minimum wage has been increased from VND 210/month-290,000/month (around $15month-$18/month) under Decree No 203/2004 of the Government dated December 14, 2004.

In the past few years GDP of Vietnam keep on growing steadily at the average of 7 percent annually with the increase of FDI flow as the result of series of investment encouragement policies of the Vietnam State, and cheap labor wage has been regarded as the advantage of Vietnam competition capacity. However, according to the human development report 2004 of UNDP Vietnam still in the 112 HDI rank having GDP per capita of US$436 (from around 2-10 times lower than other countries in the regions such as Thailand- US$2,060; Malaysia-US$3,905; Philippines-US$975; Indonesia-US$817). This means the cheap labor wage does not bring much improvement for the Vietnam economic competition capacity.

Table 3: Average income[16] of Vietnamese workers in enterprises

Types of enterprises	Average income/worker/ month (VND)[17]	Compare with the common income (%)
Local sectors, including SOEs	1,043,000	100
Foreign sector	1,758,000	168.55
100% FIEs	1,386,000	132.89
Joint venture enterprise	2,745,000	263.18
Joint venture cooperative	5,361,000	514.00
Other types of joint venture	1,854,000	177.76
Sub-contract joint venture	2,450,000	234.90

Source: General Statistic Bureau, 2002

The table shows that the incomes of the workers working for TNCs are much higher than the local firms-around 2 times higher than the local partners of both private and public sectors. Is that because "the civilized countries treat the employees in more civilized manner, not like the local firms"? as claimed by H. Unionist Interviewee[18]. The rationales have shown the different. It is not because the TNCs

[16] The income includes wage, remuneration, social insurance, and other related income that the employers pay for the workers monthly.
[17] US$ 1 is equivalent to around VND 15,600 in 2002
[18] Interview was done by the researcher with an Unionist expert named H. at VGCL

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generally be more generous than the local firms nor it is the result of the difference fix of minimum wage between foreign sector and other local sectors, but because:

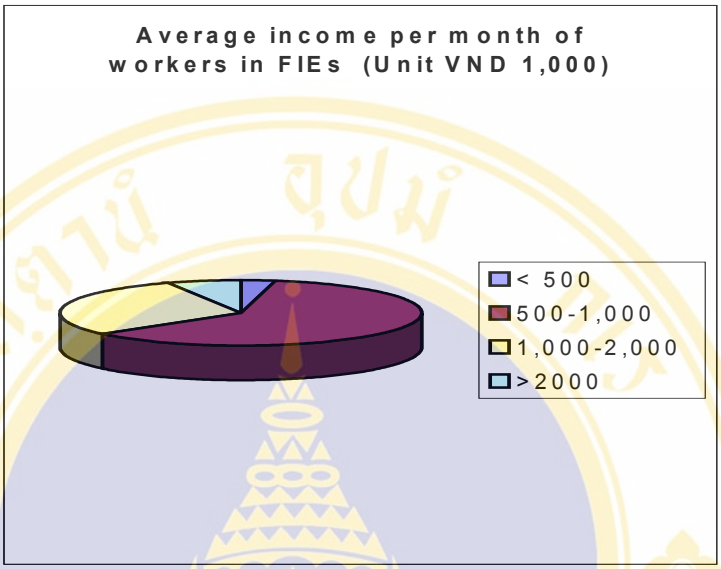

Figure 3: Average income per month of workers in FIEs

The incomes of workers in some foreign invested enterprises and units of some industries such as energy, services, IT, telecommunication, etc. are high that have increased the average income of the workers. The rest industries concentrating a large percentage of workforce such as garment and textile, shoe, seafood processing the average incomes of the workers are still low. Of the total target employees in the foreign invested enterprises and units the percentage of those who have income lower than VND 500,000 account for 2.84; from VND 500,000-1,000,000 account for over 55.6 and from VND 1,000,000-2,000,000 account for 26.82 percent; over VND 2,000,000 only account for 6.13 percent (Institute of Worker and Trade Union Movement 2002: 66).

The findings of the Institute of Workers and Trade Union Movement also similar to the findings of the researcher for extra-interview of some workers in FIEs of different types in Bien Hoa city, Dong Nai province (one of the province attracting the large number of FIEs and workers in the South) to check this hypothesis. The interview did with one woman worker from a Japanese owned enterprise, producing engine parts, and other two men workers from Korean owned textile company. The

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average income of them ranges from (around US$ 50- 60) with 11 hours of work daily. Such findings have the conjunction with the increasing percentage of strike conducted by the workers in the foreign invested enterprises in Vietnam recently (for more information see item 4.6)

Moreover, the incomes of the workers in many foreign invested enterprises and units are not certain due to the continuously changes on production facilities and reorganizing laborers including the cutting of workforces to adjust with the change of the world market and Vietnam is also suffering from such challenges together with other countries, especially with other developing countries as the result of its integration in the world economy. The following case is not an exceptional:

> In the morning of March 21, 2005 there are 40 workers of the sewing line 8E of the Kyungrhim Vina (100 percent Korean investment *is* operating in Ho Chi Minh city) were got sack by the director because of not agreeing to work additional hour until morning. According to the workers in recent months the company continually increase the working hours of the workers from 7am until 9 pm, including Sunday. Many times the company increase such working hours until 3 am of the following day. The workers had to come back to work after only 4 hours. It is known that in the company the workers have no labor contract, no social and medical insurance. The company often get sack the workers because of any reason. Therefore, life of the workers here are very uncertain (Labor newspaper 2005:1)

Thing is similar in other local enterprises, especially on garment and textile, shoes. Having no certain work is a popular phenomenon. The study of VGCL in 2002 with 900 women workers working at 50 enterprises of garment and textile, shoes (20 percent of which are SOEs) in Hanoi, Da Nang city, Ho Chi Minh city, and Binh Duong province shows annually, one third of the women workers have to stop their work when the enterprises do not have orders from customers, 20.4 percent of whom have to leave the work from 30-90 days. Two fifth of them do not receive any remuneration during such leave. Over 50 percent of the women workers receive the remuneration below 30 percent of the practical daily wage as stated in article 62 of the Labor Code.

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Such findings are similar to the findings generated from depth-interview that the researcher did on the workers in Duc Giang garment company in Hanoi regarding the right to a decent living of the workers. There is not much difference among working experiences (from 5 months to 8 years) with the wage level they get since the company apply the wage level under fix price target for the products they make. Normally their salary range from VND 600,000 to 1,000,000 (around $37-60) .

For example, L, 23 years old. She joined the company 1 year ago, having 3 month sewing certificate. She involves in multi part sewing: "My salary depends on the number of products I produce. The more I make the higher salary I get. Normally I earn VND 600,000/month (US$37) the highest is 800,000/month (US$ 50)".

The competition in garment and textile industry is becoming tougher since almost all developing countries focus on this industry, especially in the context of WTO accession. The development of china garment and textile industry has been a big challenge for this industry in other developing countries, including Vietnam. To increase the competition capacity the Vietnamese enterprises are seeking measures to reduce the production expense, including exploiting the workers more such as setting wage level under the volume of products made by the workers with low fix price volume, asking the workers to work additional hour frequently without paying remuneration or pay the remuneration lower than the level stated in labor laws.

H. 31 years old with 8 years working experiences in a collar drawing group: "My salary is VND 1,000,000/ month (around US$ 60/month). Eariler, it was higher around VND 1,100,000-1,300,000/month (around US$ 64/month- US$66/month). Recently due to the competition with China hence, my salary decrease".

It can be said the wage of the workers in private sectors generally now do not catch up with the rapid rising of the cost of living, especially in the urban centers, " in five initial months of 2005 the price index increases by 4.8 percent; compared to January, 2003 the price index in May, 2005 is 117.15 percent" (Labor newspaper 2005: 1) that has led the workers in private sectors become more vulnerable.

The development of enterprises of private sectors, especially in such cities and provinces concentrating a large number of industrial zones as Hanoi, Ho Chi Minh city, Dong Nai, Binh Duong, etc. has attracted a significant percentage of workers. Majority of them are migrants-around 120,000 under the statistic of MOLISA in 2004.

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This has led to a big demand on housing for the workers. Mostly, the workers have to seek the housing by themselves through renting from the local individuals. Due to low wages they are having to rent cheap rooms no matter how bad it is.

For example, the living quarter for workers working at Duc Giang garment company in Hanoi is not an exception. Here, all of the workers have to find the housing by themselves with no support from the company. Most of them come from other provinces. They have to rent rooms from local individuals with the price around $13/month/room. The living quarter that I visited was among of these. In the total square of around 10 square metres there were 4 women workers are living together in order to save the renting expense so that their limited wage can afford. There was one common kitchen with hardly anything except a coal stove and one bathroom and toilet for all of the 20 rentees in the whole living quarter.

Regarding wages for the workers, Vietnam Trade Union has an important role related to the wage policy of the State as stated in article 5 of Trade Union law 1990: " Trade Union involve with state agencies to devise laws and policies on labor, wage". In pursuant to this until now the VGCL has been directly involving with the Government to devise and implement laws and policies on wages and remuneration of the workers of different sectors including minimum wage level, and monitor the implementation of laws and policies on wages and remuneration of the workers in agencies and enterprises, collect opinion of the workers regarding this as well as conducting research on the change of socio-economic, worker's living standard to recommend the State on the change of laws and policies regarding wages and remuneration of the workers, including minimum wage level to suit with the current rationales.

However, regarding the practical low wage of the workers in private sectors at the moment, the role of VGCL has been considered not strong enough in the eye of the Government. There are two major reasons for this. First, it is because the Government find it is difficult to raise the minimum wage volume for the workers in private sectors for fear of loosing the investors. For instance, raising the minimum wage for workers at FDI companies is one of the proposals that VGCL presented to Prime Minister Phan Van Khai at the annual meeting between the Government and VGCL in 2004. VGCL has asked the Prime Minister to increase the minimum wage for FDI enterprises to

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US$45 per month since the decrease of the minimum wage for FDI enterprises and the rising of price index such minimum wage is not suitable, that has led the workers facing a lot of difficulties because of the rising of the price of goods and rental fees. "There has been no suitable policies regarding the wages of the workers working in foreign invested enterprises, meanwhile, the price index increases annually that has led to the real incomes of these workers lower than previous years" (VGCL 2005: 14). However,

> At the meeting, Prime Minister Phan Van Khai said the Government is very concerned with laborers' living conditions in the current economic climate.
>
> He said it was necessary to reconsider the minimum wage for FDI businesses, as it is currently too low.
>
> Khai said the Ministry of Labour, Invalids and Social Affairs, the Viet Nam Confederation of Labour and relevant sectors and ministries needed to study the minimum wages in big cities to devise a suitable figure. However, he said the ministries and sectors should consider the adverse effects of a wage rise to Viet Nam's investment environment, which is known for its abundant, inexpensive and skilled labour force. (VNS 2005:1);

Thing is similar to the case on housing for the workers, in which the VGCL has recommended the Government to have detail solutions regarding housing for the workers having low income, including those who are living in industrial zones and processing zones. Despite this effort together with the 3 year enforcement of the Decree No 71/2001 of the Government on encouraging investment in building housing for lease in industrial zones and processing zones; additionally, the Government has asked the competent bodies to consider about the building of housing for the workers when implementing the project on industrial zones and processing zones almost nothing has been done regarding the housing for the workers. According to the National Assembly member in charge of Hanoi Hoang Van Nghien: "Actually, when planning industrial zones such as Sai Dong B, Noi Bai, North Thang Long, etc. the competent bodies of Hanoi have taken the building of housing for workers into consideration However, the implementation of the authorized agencies is very slow because of the ambiguity of laws. It is not because of lack of capital and land. All of

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these have led to the inadequate housing for lease in Hanoi" (Nghien, Van Hoang 2004: 2)

The second reason can be placed at the weak independence of the VGCL compared with the government. The role of cooperation nature between the two parties have not been really highlighted as discussed in the chapter III of the research that have led to the weak voice of VGCL in demanding the implementation of the right to a decent living for the workers.

The third reason is the ineffectiveness in operation of Trade Unions at grassroots levels. With the current mechanism of the Vietnam Trade Union (at central level it is concentrating a large number of staff. This reduced at province level, then district level. And lastly at grassroots level where have to deal with a lot of issues arising from the work to protect workers' rights there is a smaller number of Unionist per unit). Moreover, these Unionists at grassroots levels also concurrently be the workers. They are directly recruited by the employers. Typically, at private sectors these Unionists are afraid of being kicked off or discriminated from the employers, to make matter worse, there has been no policies detail protecting them from these risk of discrimination, which under the international standards is the obligation of the member states. Therefore, in many cases the Trade Unions at grassroots levels could not defend for their member workers from the violation of the employers regarding their rights, including their right to a decent living. Their work focus more on other issues such as caring for the workers when they are sick, organizing entertaining activities, etc. more than protecting the workers' rights, including the right to a decent living of the workers. This has led to the fact that the workers (especially the blue collar workers) though being aware that they are being exploited with much lower wage than the effort they have made and with such wage levels they could not have a decent living but due to the lack of job they have to accept the situation. And, the Trade Union at Duc Giang Garment company is among of this case:

> I know that our wage is lower than the effort we paid. It is because of the low fix rate for each of product you produce. I accept it. There is no other third party except the manager can do this. The Unionists are unable to interfere into this since they have no power to do it. I do not expect more that the Trade union in

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my company can do such as interfering into our salary because I know that they can not do it. (L, worker at multi part sewing, Duc Giang garment company).

Also the operation of the Trade Union at grassroots level have not closed to the workers. That is the case of all interviewees' opinion at the depth-interviews. The workers do not know clearly about the work of the Trade Union operating in their respective enterprises not just because the number of the Unionists are small compared with the number of the workers like the case of Q. in the energy enterprises as mentioned earlier but because there have been no communication for the workers on the role of the Trade Union in their enterprises even in the case of Duc Giang garment company, an used to be SOEs with a long time run Trade Union with the existence of one Unionist every production unit of around 30-38 workers, excluding 8 Unionist of upper levels in the enterprises.

Moreover, the monitoring the implementation of laws and policies in enterprises of competent bodies including the Trade Union is weak. In terms of the Trade Union it self not only the monitoring work of the Trade Union at grassroots level is weak mainly because of the above mentioned reasons, but such work done by Trade Union of upper levels are also very weak. According to the report of VGCL in 2004 on the activities of Trade Union the monitoring of the implementation of laws and policies regarding worker's rights and interests was only conducted in "8 state corporations with 40 Trade Unions of grassroots levels" (VGCL: 28) by the presidential board of VGCL. There is no report of this monitoring at lower levels. The rest of more than 58,000 Trade Union of grassroots levels, especially at private sectors are still left underreported. Hence, it is no doubt that the violation of the employers on their workers rights is very popular. That is very serious in the cases of garment and textile, shoes, leather, and food processing enterprises such as the case of Duc Giang garment company, or the case of Kyungrhim Vina Garment company as mentioned above.

Finally, the small percentage of Unionization density in enterprises of private sectors is also a reason that weakening the role of Trade Union in protecting the right to a decent living particularly of the workers in private sectors.

4.3. Rest, leisure and working hours

The right of the workers to rest and leisure including the reasonable working hours and periodic holidays with full remuneration is recognized in various important

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documents of the UN such as UDHR, ICESCR, and typical Conventions and Recommendations of ILO on work hour and rest such as Hours of work (Industry) Convention, 1919 (No1); Forty-Hour Week Convention, 1935 (No 47) and Reduction of Hours of Work Recommendation, 1962 (No116); Convention No 14 on Weekly rest Convention No 52 on Holidays with pay, recognizing the annual leave of the workers performing from one year of continuous services and over.

International Labor standards have been localized in Vietnam Labor Code regarding rest, leisure and working hour. In terms of working hours article 68 item 1 states "Working hours shall not exceed eight hours per day or forty eight (48) hours per week".

Beside the normal working hours there may have additional working hours as agreed by the employers and the workers:

An employer and an employee may agree on additional working hours provided that the number of additional hours worked is no more than four hours a day or two hundred (200) hours annually, except in a number of special cases[19] where the number of additional hours worked is no more than three hundred (300) hours annually as stipulated by the Government after consulting the Vietnam General Confederation of Labour and representatives of employers. (article 69 of Labor Code)

Article 71 of Labor Codes prescribes the break during work:

1. An employee who works for eight hours consecutively shall be entitled to a break of at least half an hour which shall be included in the number of hours worked.
2. An employee who works nightshift shall be entitled to a break of at least forty five (45) minutes which shall be included in the number of hours worked.
3. An employee who works in shifts shall be entitled to a break of at least twelve hours between each shift.

[19] Apply for textile and garment, shoe and seafood processing enterprises when have to deal with urgent production needs or due to the seasonal of production or other objective causes that can not delay under Decree No 109/2002 of the Government dated December 27, 2002 directing the implementation of the Labor Code on rest and working hours.

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In terms of rest and leisure time under article 72 item 1 and item 3 of Labor Code: "In every week, each employee shall be entitled to a break of at least one day (twenty four consecutive hours); Where, due to the nature of the work, it is impossible for the employees to have a weekly day off, the employer must ensure that the employees on average have at least four days off in a month".

In addition to weekly off there is annual leave with full remuneration for workers who have been working in their enterprises for at least twelve months as stated in article 74 item 1 of the Labor Code:

(a) Twelve (12) working days shall apply to employees working in normal working conditions;

(b) Fourteen (14) working days shall apply to persons working in heavy, dangerous, or toxic jobs, or in places with harsh living conditions, and to persons under the age of eighteen (18) years;

(c) Sixteen (16) working days shall apply to persons working in extremely heavy, dangerous, or toxic jobs, or in heavy, dangerous, or toxic jobs in places with harsh living conditions.

However, the rationales regarding the rest, leisure and working hour is different from the commitment of Vietnam State stated in labor laws as mentioned above.

In Hanoi, according to a survey of the Women department of Hanoi Federation of Labor on 530 enterprises of private sectors in Hanoi in 2004 shows the average working hours of the workers is from 10-12 hours/day. However, remuneration for additional hour is not paid under the provisions of the Labor Code, but only under the fix price level of the product or they are just provided food during the mid-shift.

The above mentioned survey results regarding rest, and working hours of the workers also similar to the field findings of the researcher. It shows that the working hour and weekly leave as well as the annual leave of white collar workers working in joint venture enterprises and foreign invested enterprises are under the provisions of law. Of course, they still have to work additional hours, especially for the case of N, a male interviewee working as an accountant at a Joint Venture on Tourism between French and Vietnam: "From September to April is the season for tourism, hence, we have to work harder and come home later- one hour additional working daily (lower than 150 hours/year). But, we got bonus under laws for that".

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Things are different with the blue color workers in Duc Giang garment company. They usually have to work 13 hours/days (from 6.30 am to 7.30 pm), around 90 hours/week. Additional working hours is around 600 hours/years, much over the maximum level stipulated in article 69 of the Labor Code as mentioned above on additional working hours. Moreover, when setting the additional working hours the employer does not discuss to grant the approval of the workers; Each month the workers only have 2 Sundays off work, which is violating article 72 of the Labor Code, item on additional working hours of Decree No 109/2002 of the Government dated December 27, 2002 directing the implementation of the Labor Code on rest and working hours . As mentioned earlier that the wages of the workers in private sectors are usually calculated under the number of products they produce. However, their wages are not much better because of continuously additional working hours. Each month they could only get around $37-60. With that small amount of money they could only stay in poor condition housing as mentioned above. Moreover, the workers in this company mostly are young, many of them from 21- 40. Despite their young and healthy the difficult working environment has badly affected to their health. That is the reason why the average working year is not long, from 1 -5 years as told by the interviewees: “I do not think that I can work here long because my effort is spent much more than the wage I receive. I have worked here for 2 years and lost 6 kg”. (N. worker at drawing section, Duc Giang garment company).

Quoting a reader of Vietnam Net newspaper writing about the working hour, and rest and leisure time of workers in garment and textile enterprises in Hanoi:

> Hoping that with series of these article those enterprises forcing the workers to work additional hours much over the limitation provided by the State will consider and arrange the working schedule for the workers to enable them have a normal life like other workers in society, enabling them get benefit from the current improving living standard. There is a big garment enterprise in Hanoi force worker to work several months continuously with no Sunday off work and every day they have to work from 7 30 am till 9 pm even overnight. Meanwhile, the other workers are enjoying 40 working hour/week the garment workers have to work 80-90 hour/week. Wages decrease from year to year. The workers also know that under law they are entitled to be paid remuneration for additional

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working hour higher than other normal hour but the enterprise managers always ignore it. (Vietnam net 2005:2)

The foregoing rationales is not only popular in Hanoi, limited in garment and textile enterprises but it also popular in other types of enterprises.

The study of VGCL in 2002 with 900 women workers working at 50 enterprises of garment and textile, shoes (20 percent of which are SOEs) in Hanoi, Da Nang city, Ho Chi Minh city, and Binh Duong province shows regarding the additional working hours nearly four fifth of the women workers have to work additional hour, and around two fifth of them have to work more than 12 hour/day. Over 50 percent of them have to work more than additional 200 hour in the last 12 months, in which 12.3 percent of them have to work more than 500 additional hour; one quarter have to work night shift. However, 54 percent of the women workers working additional hour during week day is paid lower than the level set in provisions of labor code (150 percent); 55.4 percent of women workers working additional hour during holidays, which is violation of article 61 item 1 and item 2 of Labor Code regarding additional hour remuneration.

Regarding weekly and annually holidays only three fifth of them have holidays lower than four days/month; Over one fourth of the women workers in the past 12 months have not have the annual work leave as stated in article 74 of the Labor Code. Article 71 of the Labor Code regarding the 30 minute break when having to work 8 hour continuously is also violated-23.6 percent.

Such violation on the right to rest, leisure and working hours of the workers that has unable the workers to enjoy their entertained activities. Again quoting a reader of Vietnam Net newspaper writing about the working hour, and rest and leisure time of workers in garment and textile enterprises in Hanoi:

> They (the workers) have been made to become a machine, only know how to work. They do not have time even to cook a meal nor enjoying other entertained activities. They are too tired after long and continuous working days. Many of them wish to have only one day off work to enjoy with their family members and friends, such wish has become so luxury. This has happened not only one year but several years already. Never before the workers have to suffer such a stress like this.

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> I would like the Labor inspector to examine the big garment enterprises in Hanoi with no dual notification to let the workers speak the truth. The organized inspectors only can collect arranged information that the enterprise managers ask the workers to speak because of the benefit, prestige of the enterprises. What can we do to enable our workers to have the rest and leisure time and enjoy a little benefit from the "doi moi" achievement? (Vietnam net 2005:2)

Working hard with long working hours and less day off work the workers, especially the blue color workers often do not have time to for entertainment activities and other personal activities. Quoting from workers at Keyhinge company, Vietnam Knit Wear company in Hoa Khanh industrial zone of Da Nang city: "When the working days finish we come back home, cooking. After that, it is bed time, we do not have enough time and money for entertainment" (Labor news paper 2004: 1);

D. , worker at TaeKwang Vina company, Bien Hoa 2 industrial zone said: "We are in the loving age. However, working hard the whole day, how can we find a lover? To relax and to forget the hard daily life the only way I can do is renting love stories to read" (Labor newspaper 2004: 2)

The rights of workers on rest, leisure and working hours have been known by the authority bodies. According to the Deputy head of the Department of culture and information, Ministry of Culture and Information Ms. Do Kim Thinh:

> Workers in the industrial zones and processing zones seem to have to work until exhaust; they do not have condition to enable themselves involve in and benefit from cultural activities. When building industrial zones and processing zones the authorized bodies have forgotten the necessity to establish cultural and sport institutions, hence the workers have to suffer from a lot of disadvantages (Labor newspaper 2004: 1).

Though recognizing this fact so far not much action has been done from the authority bodies to improve the worker's situation in private sectors.

Discussing about the role of Vietnam Trade Union regarding rest, leisure and working hours under article 5 of Trade Union law and article 69 and article 156 of Labor Code stating that the responsibility of Vietnam Trade Union in consulting with the Government on working hours including the additional working hours; in addition Vietnam Trade Union has the right to be consulted by the employers to determine a

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timetable for annual leave of the workers as stated in article 76 of Labor Code: " Subject to consultation with the executive committee of the trade union of an enterprise, an employer shall have the right to determine a timetable for the annual leave of employees provided that everyone in the enterprise is notified in advance";

Especially the Vietnam Trade Union is entitled to monitor the implementation of laws and policies regarding the interests of the workers such as labor contract, wages, insurances, etc. and when exercising such rights it is entitled to ask and make proposals to the relevant bodies and agencies, including enterprises to answer the requested issues as stated in article 9 of Trade Union law.

However, the research findings shows that at grassroots level the Trade Union have done almost nothing to eliminate the violation of the right to rest, leisure and working hours because of their weak voice in their enterprises as well as weak representation as discussed in the previous item 4.2.

At macro level though having such responsibility to monitor the implementation of labor laws regarding rights and interests of the workers, including regarding the right of the workers to rest, leisure and working hours, no result on such issues have been addressed nationally in the monitoring and examining activities of the VGCL in the report of the Trade Union activity in 2004 at IX Congress of VGCL except the examining activity of VGCL on the implementation of Labor Code in 40 Trade Unions of 8 State Corporations.

Though claming to shift the focus on protecting the workers rights in private sectors, it is easily recognized that until now Vietnam Trade Union has not paid much attention to response to the exploitation of workers in the private sectors nation-wide, especially regarding the right to rest, leisure and working hours though many cases have been addressed in public. Of course, the weak representation density of Trade Union at grassroots level is one of the major factor leading to the weak role of Trade Union in Vietnam in response to the violation of this right of the workers, however, what about the response of Trade Union of upper levels, where are very close with the authority bodies? It can be answered that monitoring the implementation of labor laws including the legal provisions on working hours and rest of the workers is one of the major function of Trade Union in Vietnam, especially form Trade Union of upper levels , but through the report of VGCL at IX Congress in 2004 such activities only

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focus on the state sectors. What about the private sectors? the examining mostly will be taken at some certain enterprises after the labor dispute have been known publicly. The case of Kyungrhim Vina as discussed in the previous item is among that. Other cases such as the case of Duc Giang garment company, or many other companies else are violating the right to rest, leisure and working hours of the workers despite the existence of the Trade Union of grassroots level the response from Trade Union many not be made until labor dispute occurred or the problems are made publicly. That is one of the major reason leading to the increasing of strike in Vietnam in recent years (for more information see item 4.6).

4.4 The right to safe and healthy working condition

The right to safe and healthy working condition is considered the most important right of the workers since it attach with the right to life and right to health- the two most important human rights. The right to safe and healthy working condition of the workers are acknowledged in various important documents of the UN such as UDHR; ICESCR; CEDAW[20] and some typical Conventions of ILO on the right to safe and healthy working condition such as Convention No 155 Occupational Safety and Health , and Recommendation (No 164), 1981.

Labor Code has localized the ideas stated in international Labor standards regarding the right to safe and healthy working condition. It requires the State to have a focal point in managing the labor protection activities to ensure the workers working in a safe and healthy environment as stated in article 95 item 2:

> The Government shall establish national programmes on labour protection and occupational safety and hygiene in its socio-economic development plans and State Budget; it shall invest in scientific research and shall provide assistance for establishments which manufacture tools and equipment for occupational safety, hygiene, and personal protection; and it shall promulgate provisions on the regime of standards and procedures for occupational safety and hygiene.

Respecting labor protection regulations is also the responsibilities of relevant parties, including the workers and employers. For example, article 95 item 1 states the

[20] Vietnam ratified CEDAW on 17 February 1982.

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employers and the workers to comply with occupational safety and hygiene regulations: "An employer shall be responsible for the provision of sufficient protective equipment and ensuring occupational safety and hygiene, and for the improvement of work conditions in the work place. The employee must comply with all occupational safety and hygiene regulations and the internal labour rules of the enterprise"

Article 98 item 1 states: "The employer must, on a regular basis, inspect, maintain, and repair machinery, equipment, plants and buildings, and storage facilities in accordance with occupational safety and hygiene standards";

Article 99 item 2: "An employee shall have the right to refuse to work or to leave the work place where there is an obvious and serious danger to his life or health, and must immediately report the danger to his direct superior. An employer must not force an employee to continue working or to return to the work place if the danger is not yet overcome";

Article 103: "Enterprises shall be responsible for organizing health care for employees and for implementation of first aid and emergency actions when required"

Under labor laws Vietnam Trade Union has an important role in labor protection to ensure the right of the workers to safe and healthy working condition. The involvement of Vietnam Trade Union in such activity is considered one of its important work to implement its function of protecting worker's rights, in which it can be seen very clear the integration of Vietnam Trade Union into the globalized trend with the appliance of international Labor standards, especially relevant ILO Conventions as mentioned above. It also implies the combination of Communist Trade Union ideology in which the role of Vietnam Trade Union in management activities involvement in state agencies and in enterprises of both public and private sectors can be seen very clearly. In pursuant with these, Vietnam Trade Union is entitled to involve in devising laws and policies regarding rights and interests of the workers including the provisions on safe and healthy working condition; cooperate with state agencies in the preparation of scientific research programmes, in devising criteria on working safety and industrial hygiene; communicate and mobilize the workers on provisions and criteria on labor protection ; and monitor the implementation of laws on labor protection; involve in inspection of labor accidents as stated in article 5 and

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article 6 of Trade Union law 1990 as well as in article 95 of the Labor Code 1994; representing the workers to sign collective bargaining, which include the content on safe and healthy working condition as stated in article 44 of the Labor Code 1994; In addition it is also consulted by the competent state agencies when devising the list of types of occupational diseases as stated in article 106 of Labor Code 1994, etc.

To implement these above mentioned rights and obligations Vietnam Trade Union has organized a close mechanism in charge of labor protection activities from central level to grassroots level. For example, central level there is the presidential board of VGCL, department of labor protection together with the assistance of other research and educational institutions such as the Institute of labor protection, department of labor protection of Trade Union University, directing the labor protection activities for the local Trade Unions, and Trade Union of central agencies, at local levels and Trade Union of central agencies there area Unionists in charge of labor protection (for more information see Appendix B)

OSH activities of Vietnam Trade Union so far focus on conducting researches, initiatives to promote the working condition; communication on occupational safety and hygiene through the work of the communicators; seminars, brochures; training for the Unionists, workers, occupational safety and hygiene communicators; employers, for example, campaigns on OSH have been conducted by Vietnam Trade Unions at all levels in 2004 through training courses organized for more than 200,000 Unionists and workers, 11,000 posters and brochures on OSH have been released" (VGCL 2005: 32-33), especially monitoring of the implementation of laws regarding OSH has been paid attention by the Vietnam Trade Union as mentioned in the annual report of VGCL on OSH. For instance,

> In 2004 Trade Union of all levels have involved in examining 10,718 Units, 3,172 of which were examined independently by the Trade Unions; the implementation of Trade Unions of all levels in monitoring of labor protection as well as guiding the relevant parties in implementing labor protection have been well-implemented, actively contributing to enhancing the quality of labor protection at all levels" (VGCL 2005: 5).

However, this report also admit the weak role of Trade Union regarding OSH: "The OSH activities of Trade Union of some local Trade Unions, National Industrial

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Unions are running in formalistic ways, lack of implementation measures; the Unionists are still concurrently involve in different work other than OSH[21], hence, the efficiency of OSH activities still remain weak". (VGCL 2005:1)

> OSH policies in many enterprises of private sectors, particularly enterprises of medium and small size, enterprises using seasonal and short-term labor contract workers with unstable production and business activities the safe and healthy working condition hardly be implemented, for instance, violating the laws on providing individual safety protection facilities, paying the toxic environment in money for the workers, etc. (VGCL 2004:5).

Hence, the there is conflict in evaluating the role of Trade Union in labor protection in this report. However, when checking with other data, it shows that despite the acknowledgement of Vietnam authority bodies as well as measures undertaken regarding labor protection including the systematically involvement of the Vietnam Trade Union mechanism the realization of the right to safe and healthy working condition of the workers, especially in private sectors remain weak. A survey implemented by the Research Institute for Occupational Disease Preventive Science and Technology conducted on 1,017 production enterprises in industrial zones across the country in 2004 shows:

> 66.5 per cent of them have excessive heat pollution and 30 per cent excessive noise pollution; 28 per cent suffered dust pollution, 17 per cent toxic gas pollution, and 25 per cent inadequate work conditions or lighting. Industrial pollution, he said, was the main cause for occupational diseases. Poor infrastructure at production facilities and out-of-date equipment and technology have also added to an increase in occupational diseases.
>
> Production facilities at surveyed industrial zones, generally have inadequate ventilation systems and workplace temperatures 3 to 5 degrees higher than outdoor temperatures. (Vietnam news 2005: 1)

Production facilities imported from other countries are not suitable with the local workers that have contributed to affect their health: "the imported production facilities mostly are not suitable with the small built of the Vietnamese that place the burden to

[21] Until now in all of the Trade Union of local levels there have been no independent department on OSH except Hanoi Federation of Labor-just established in January, 2005 . For more information see Appendix B.

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the working capacity for Vietnamese workers, especially women workers (lower than 10% of the workers suit with the design criteria of the production machines imported from Europe, USA)" (Institute of Worker and Trade Union movement: 2003).

Labor accidents are increasing year by year. In 2002 under inadequate statistic there were 4,298 labor accidents, in which 449 cases causing death for 514 persons, increased by 20.62 percent (the killed persons increased by 30.12 percent) compared with 2001. Hanoi was among 27 areas having the increased dead accidents-33.33 percent. The accidents causing death in private sectors account for 36.58 percent. Causes of these accidents were because of the violation of the employer and workers on the criteria and regulation on safety working condition-accounted for 71 percent.

However, reports on labor accident inspection under laws were not done strictly in many enterprises and production units. For example, in Gia Lai there was only 3.18 percent SOEs reported on the labor accidents, non enterprises among 518 enterprises of private sectors reported this.

In 2002 the number of workers got occupational diseases were 1,781 persons

In 2003, according to insufficient reports of Trade Unions of province level, Trade Union of Corporation under VGCL the labor accidents occurred serious. Only the accidents causing death was reported as 494 cases which killed 539 workers. Hanoi was among the 29 area having the increased dead accidents. The accidents causing death in private sectors increased by 37.15 percent compared with 2001 (36.58 percent). Causes of these accidents were because of the violation of the employer and workers on the criteria and regulation on safety working condition-accounted for 73 percent.

In 2003 according to the statistic of MOH on 31/64 provinces and cities in Vietnam there were 1,609 workers (Only 20 Labor Federation at province level and 5 Trade Union of central agencies reported on the occupational diseases, hence the VGCL could not evaluate the occupational diseases situation in the whole country)

In 2004 according to insufficient statistic of VGCL there was 570 labor accidents, which killed 594 workers. Hanoi was also among the area having the increased labor accidents. Labor accidents in private sectors accounted for 43.82 percent. Causes of labor accidents mainly due to the violation of the employer and

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workers on the criteria and regulation on safety working condition-accounted for 84.40 percent.

According to the statistic of MOH and reports of Trade Unions of province level, Trade Union of Corporation under VGCL in 32 provinces and cities and ministries and agencies there were 7.908 workers got occupational diseases.

The statistic done by the department of labor protection, VGCL mentioned above on labor accidents and occupational diseases are not sufficient and not in uniformity from years to years (2002-2004) due to lack of data. However, regarding labor accidents VGCL also aware that:

> In practice the number of labor accidents is much bigger. Major causes leading to labor accidents are the violation of the employers and employees on provisions of OSH-account for more than 88 percent. In many localities both employers and employees have not been trained on OSH, especially in terms of self-wage employees, seasonal employees; the monitoring activities is not conducted frequently; the examining and deal with violation acts are slow and have litter educational and protective effectiveness in addition to the inefficient work of OSH communicators. (VGCL 2005: 33-34)

Through which it can be said that the labor protection activities of Vietnam Trade Union have been done not effectively. They could not tell about the adequate reality on the labor accidents and occupational diseases of the workers since there are many localities despite the existence of the duty under VGCL to report on labor protection activities in their respective localities they do not report on the facts of labor accidents and occupational diseases of the workers, especially for instance in 2003 VGCL only received 124 reports on the inspection results of labor accidents causing death from Trade Union of lower levels, which accounted for only 32.71 percent of the reported cases of labor accidents causing death. Also in 2003 the VGCL only received 22 reports of Trade Union at local levels and National Industrial Trade Unions in due time. Therefore, many times, VGCL have to base on the statistic of the MOH regarding occupational disease or of the MOLISA regarding labor accidents. However, there always the different data between relevant agencies, especially regarding occupational diseases from MOH the data mostly inferred from the implementation of some projects in a certain number of provinces and cities, not nation-wide localities.

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This, of course will affect the quality of other labor protection activities, especially the devising laws related to labor protection activity and the monitoring activity on the implementation of laws regarding labor protection.

On the other hand, though could not evaluate the situation of labor accidents and occupational diseases in sufficient statistic it tells that the labor accidents and occupational diseases of the workers have increased from year to year. This can be seen from following figures:

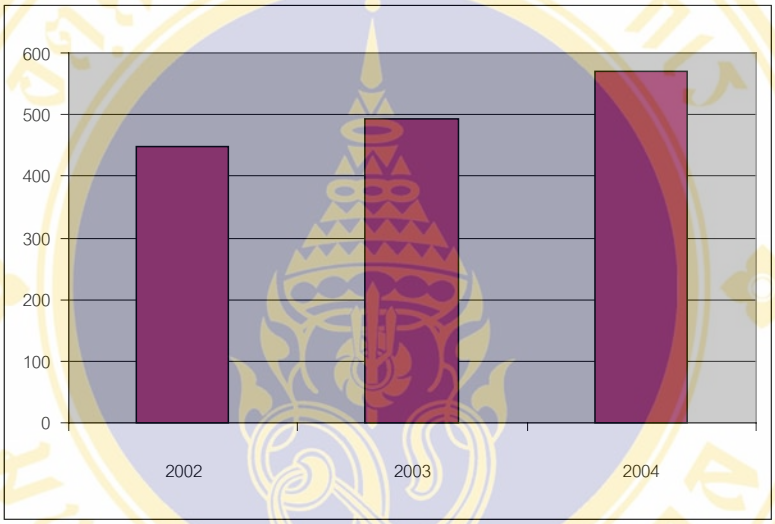

Figure 4: Number of labor accident causing death from 2002-2004 (insufficient statistic)

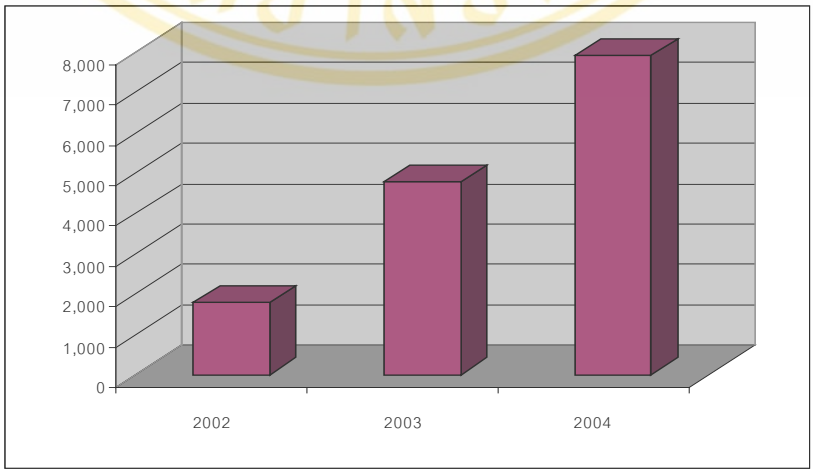

Figure 5: Number of occupational diseases from 2002-2004 (insufficient statistic)

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4.5 The right to organize and bargain collectively

The right of the workers to organize and bargain collectively is acknowledged in UDHR; ICESCR; ICCPR[22] and two major Conventions of ILO regarding the right to organize - Convention No 87 on Freedom of Association and Protection of the Right to Organise, 1948, and Right to Organise and Collective Bargaining Convention, 1949 (No 98); Collective bargaining Convention No 154 and Recommendation No 163, 1981 which ensure the right of the workers to join Trade Union under their consent[23] without any discrimination of any kind on the basis of sex, occupation, color, race, etc as well as the full freedom of Trade Union and employer's organizations in functioning their organizations, and affiliating with international organizations; protection against acts of anti-union discrimination in respect of their employment; and the right of the workers under their representatives (Trade Unions) to collectively negotiate with the employers regarding working conditions and terms of employment; regulating relations between employers and workers and their representatives. Vietnam though has not ratified ILO Convention No 87 on Freedom of Association and Protection of the Right to Organise, 1948 and Right to Organise and Collective Bargaining Convention, 1949 (No 98) it is legally abided by international labor standards regarding this right because of its membership status in ICCPR and ICESCR in addition to other political pressure from the West.

The current labor laws of Vietnam implies the inheritance of the communist ideology and the compromise with the ideology from the West (international labor standards) regarding the right to organize and collective bargaining as the result of "doi moi" and integration of Vietnam into the global trend. Freedom of association and the right to organize is affirmed in various legal documents of Vietnam. For instance, article 69 of Constitution 1992 states: "The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law"; article 1 item 2 of Trade Union law states:

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[22] Vietnam acceded to Civil and Political Rights Convention on September 24, 1982.

[23] This also entails the right of the employers to freely join their organizations under their consent

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Vietnamese workers in production and business Units of all sectors, foreign invested Units, state agencies, social organizations are entitled to form and join Trade Union under the provisions of Vietnam Trade Union Constitution. When establishing each Trade Union inform the relevant organizations, including state agencies to build cooperation relationship.

Every act preventing and violating principle of voluntary join the Trade Union activities; discriminating the workers because of their joining Trade Union activities are prohibited;

Article 7 item 2 of Labor Code 1994 **"** An employee shall have the right to form, join, or participate in union activities in accordance with the Law on Trade Unions in order to protect his legal rights and benefits";

In relation to the right to collective bargaining under article 11 of Trade Union law " Trade Union at grassroots level represent the worker to sign collective bargaining with the employers of all economic sectors";

Article 44 of Labor Code 1994 states:

1. A collective labor bargaining (hereinafter referred to as *collective bargaining*) is a written agreement between a labour collective and the employer in respect of working conditions and utilization of labour, and the rights and obligations of both parties in respect of labour relations.

   A collective agreement shall be negotiated and signed by the representative of the labour collective and the employer based on the principles of voluntary commitment and fairness, and shall be made public.

2. The terms and conditions of the collective agreement must not be inconsistent with the provisions of the laws on labour and other provisions of the law"; and Article 46 item 2 of the Labor Code 1994 " The principal provisions of the collective agreement shall include undertakings of the parties in respect of employment and guarantee of employment; working hours and rest breaks; salaries, bonuses, and allowances; work limits; occupational safety and hygiene; and social insurance for the employees.

Despite the acknowledgment of the freedom of association and the right to organize Vietnam has been criticized from the West because of the existence of the

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unique national Trade Union-VGCL under the leadership of CPV, which is blamed as not to defend workers' interests but to serve the political purpose of the CPV. And that the Workers are not free to join and form the unions of their choosing since any Union formed must be approved by the VGCL and must affiliate with it . All local Unions must operate under the umbrella and leadership of the VGCL.

Recently, Vietnam is aiming to join WTO. International labor standards, particularly freedom of association, which allow the establishment and operation of Trade Unions other than the current system of Vietnam Trade Union has been required by some country members of WTO as the one of the conditions for the membership of Vietnam to WTO, however, so far such requirements have been denied by the Vietnamese authority bodies.

As discussed earlier in chapter III the leadership of the CPV on Vietnam Trade Union has a historical reason attaching with the national revolution against colonization and the building of the socialist mode of state from the North to the South since gaining independence in 1975. The collapse of the Soviet bloc, the reform of China has led to the reform "doi moi" of Vietnam both economically and politically, which was formally initiated in 1986 by the CPV. In such context of "doi moi" Vietnam still affirm its aim to move forward to socialism.

To achieve this the leadership of the CPV on the state and society, particularly on Vietnam Trade Union has been maintain and strengthened. That means the full freedom of Vietnam Trade Union is intolerance. However, the independent principle of Vietnam Trade Union in running its operation is respected from both the CPV and State. For example, the right to devise Trade Union constitution, establishing local Trade Union, conducting collective bargaining, financing, and dismissing leaders of Vietnam Trade Union at all levels, etc. though the implementation of such principle is not strict enough (for more detail see chapter III discussing the relationship between Vietnam State, CPV and Vietnam Trade Union). Hence, freedom of association and the right to organize in Vietnam is an interesting case implying the compromise the conflict of ideology between the Communist ideology and the ideology from the West.

According to article 14 of Trade Union charter 2003 and article 153 of the Labor Code (amended) stating the responsibility of Trade Unions at upper levels (local trade union and industry trade unions) to establish the Trade Unions at grassroots level in

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the enterprises and units when such enterprises and units have 5 workers and over. Article 153 and article 154 of the Labor Code (amended) also state the obligation of the employers to responsible for facilitating the establishment of trade union organizations and create favorable conditions for the operation of Trade Unions; “any act which obstructs the establishment and activities of the trade union at an enterprise is strictly prohibited”. (article 153 item 1); “The employer must not prejudice an employee because he has formed, joined, or participated in the activities of a trade union organization” (article 154 item 3). Despite such provisions the thing is much different in practice with the existence of low UDR, especially in private sectors together with the anti-unionism behavior of the employers without being punished under laws. Currently, VGCL has 20 National industrial Unions and 64 Provincial federations of Labor. There are 58,619 Trade Unions at grassroots level. VGCL membership is around 4 millions workers (about 50% of wage workers), out which female members accounts for nearly 40 percent and the members in the non-state economic sectors are over 400,000 persons. Moreover, despite the effort of Vietnam Trade Union the UDR in private sectors remain low. And, state sectors still account for majority in terms of both Trade Union membership (79 percent compared with 21 percent in private sectors) and Trade Union Units of grassroots levels (83 percent compared with 17 percent in private sectors) as shown in table 2 of this research.

The main reasons for low UDR in private sectors is this situation are:

* In terms of the employers: lack of cooperation and even anti-union attitude from employers;
* In terms of the Vietnam Trade Union:
* Recently, Vietnam Trade Union has devised various policies to push up the UDR in private sectors, in which the programme to develop one million of Trade Union memberships set by the Congress IX of Trade Union as mentioned earlier is one of those attempts. As the result the UDR in private sectors have increased from 93,024 in 1993 to 902,868 in 2003 as shown in the above mentioned table 2. Such number though represent small representation of Trade Union memberships it also shows the considerable increase in UDR at private sectors. However, the implementation of policies developing Trade Union memberships has not

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been conducted synchronously. For instance, " Until July 20, 2004 there still 12 Trade Union at province levels have not implemented the programme on developing Trade Union membership in private sectors in their localities; " (Thanh, Hoang Ngoc 2004: 9).

* In terms of the state authority bodies-limited competent staff, especially labor inspectors to conduct the monitoring activities on the implementation of labor laws as well as sanctioning the violating acts depending on the serious of the violation including anti-unionism acts and so on under Decree No 113/2004 dated April 16, 2004 of the Government on administrative violation acts. Up to now the total number of the inspectors nation-wide is only 400 persons, which is too small compared with the number of enterprises and units are operating in Vietnam. Moreover, the capacity of these staff as well as corruption are also the concerns contribute to the ineffectiveness of these public officials.

Moreover, there are still problems of formality in the operation and loose enforcement. The research findings shows the quantity has been paid more attention rather than the consent of the workers to join or not join Trade Union. All worker interviewees in 4 enterprises of private sectors are members of Trade Union. And, they have joined Trade Union since being recruited in their companies. But, that is like a condition to work for the companies, not arising from their need. That means their right to freedom of association has been ignored:

We all are members of Trade Unions and our company pay Trade Union membership fees for us but not many of us know about these Unionists because they only work in HCMC and we still have two other branches and that their work only focus on social activities such as organizing entertaining activities, caring for the sick, funeral, wedding, etc. Sometimes, some of our staff asking how they use our fees and what's for (Q. woman working as marketing specialist for a multinational company on energy industry with 100% foreign investment)

ii/ Weak communication among the workers on the role of Trade Union. Hence, many workers still do not know about the significance of existence of Trade Union to protect their rights that the case of Duc Giang garment company is among the

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examples as well as the existence of inflexibility in working manner of the Unionists in persuading the workers;

iii/ Weak exercising of the major functions of Trade Union, especially the role on protecting workers' rights as discussed in previous items as well as the following item on the right to strike

iv/ Weak professional capacity of the staffing of Trade Union is another reason." I think, the important point here is the staffing. To arrange the personnel suitable with their personnel capacity is the urgent needs. In recent years, the qualification of the Unionists have been improved, however, it is still limited due to the recruitment has not been conducted good enough" (H. male interviewee, Unionists).

Such weakness interms of professional capacity of the staffing of Trade Union can be explained that many of them have not been trained professionally due to the historical context of Vietnam in the past (the wars with France and USA and being the products of the management of planned economy), however the other possible reasons are the recruitments of Trade Unions in many cases still being much influenced by the unfair rule-corruption; the deep interference of the CPV.

Moreover, though prohibiting all kinds of anti-union discrimination acts as stated in article 1 item 2 of Trade Union law 1990 to now there has been no detail protection measure from the competent bodies against anti-union discrimination applied by the employers such as getting sack the Unionists (since they concurrently are workers and under the management of the employers).

These are the reasons contributing to the ineffective operating of the grassroots Trade Union to run their tasks including their capacity on collective bargaining to protect worker's rights. According to the report of VGCL, by the end of 2002, Collective agreements were signed in:

- 80% of State- owned enterprises,
- 50% of foreign invested and
- 20% of non-state enterprises

However, in many cases such collective agreements have been drafted without the real negotiation and involvement of the Trade Unionists and the workers' teams. Such claim has been admitted by the Vietnamese Government report to ILO *under the ILO Declaration on Fundamental Principles and Rights at Work in 2000.*

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The research findings show that in all four target enterprises of private sectors though existing the Trade Union, but, according to the interviewees no collective agreements have been signed between workers represented by the Trade Union of enterprises and the employers. The workers just know to sign the individual contracts with their employers without any idea on the existence of the collective agreements regarding employment, working hours and rest and leisure time, salaries and remuneration, occupational safety and hygiene; and social insurance for the employees, etc. from the limits provided by law and over, which of course will benefit more for the workers.

4.6 The right to strike

The right to strike though has not been mentioned in any ILO Convention it is stated in ICESCR. In Vietnam the right to strike is also acknowledged as stated in the Labor Code 1994 in article 172 –179 and the procedure that a strike should follow to be considered legal. However, it is prohibited at enterprises which serve the public, and enterprises which are essential to the national economy or national security and defense as stipulated in the list issued by the Government and Where a strike is considered to be detrimental to the national economy or public safety, the Prime Minister of the Government shall have the power to issue a decision to suspend or end the strike as stated in article 174 and article 175 of the Labor Code.

Strike arises from collective labor dispute between labor collective and an employer as stated in article 157 item 2 of the Labor Code. To be considered legal strike the labor dispute has to passed following procedures: *First,* under article 170 of Labor Code:

The resolution procedure for a collective labour dispute shall be as follows:

1. The labour conciliatory council of an enterprise or the labour conciliator shall commence the resolution process within seven days from the date of receipt of the request for resolution. Both parties to the dispute or their authorized representatives must be present at the conciliation meeting.
2. The labour conciliatory council of the enterprise or the labour conciliator shall put forward a resolution proposal to the parties for consideration. If both parties accept the resolution proposal, a settlement agreement shall be

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prepared and signed by the parties, and the chairman and secretary of the labour conciliatory council of the enterprise or the labour conciliator.

3. In the event that the conciliation fails, a non-settlement statement outlining the views of the parties and the council or the labour conciliator shall be prepared by the labour conciliatory council or labour conciliator, and shall be signed by the parties, and the chairman and secretary of the council or the labour conciliator. Each or both of the parties to the dispute shall have the right to request the provincial labour arbitration council to resolve the disput".

Second, under article 171 items 1 and 3 of the Labor Code:

1. The labour arbitration council shall commence the conciliation and resolution process of the collective labour dispute within ten (10) days from the date of receipt of a request.

3. In cases where the conciliation fails , the labour arbitration council shall resolve the dispute and immediately notify the disputing parties of its decision.

Third, under article 172 item 1: "Where the labour collective is not satisfied with the decision of the labour arbitration council, it shall have the right to request the people's court to resolve the matter, or to strike".

Vietnam Trade Union (at grassroots level) is responsible to represent the workers to negotiate with the employers to settle labor dispute arising in their respective enterprises including strike as stated in article 11 of Trade Union law 1990; lead the workers exercise their right to strike, for example, article 173 item 2 of Labor Code 1994:

> The decision to strike shall be made by the executive committee of the trade union of the enterprise after obtaining the approval, by sealed votes or signatures, of more than half of the number of employees in the labour collective" after the employees in the labor collective do not agree with the labor dispute settlement of the labor conciliation team at province level and do not want the labor dispute to be settled at the competent Court as stated in article 172 of the Labor Code; "Before conducting the strike, during conducting the strike executive board of Trade Union at grassroots level is entitled to request

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the Court to decide on the legitimate of the strike (article 87 of the Ordinance on procedure of labor dispute settlement);

In addition, it is entitled to involve in labor conciliation team; voicing the opinion and demand of the workers as stated in article 98 and article 99 of the Ordinance on procedure of labor dispute settlement 1996, etc.

Since the enforcement of the Labor Code according to the statistic of VGCL between January 1995 and May 2005 Vietnam saw a total of 879 strikes (65 per cent took place at foreign-invested enterprises, 27 per cent at private companies and enterprises with domestic investment, only 8 per cent at SOEs). See following figure:

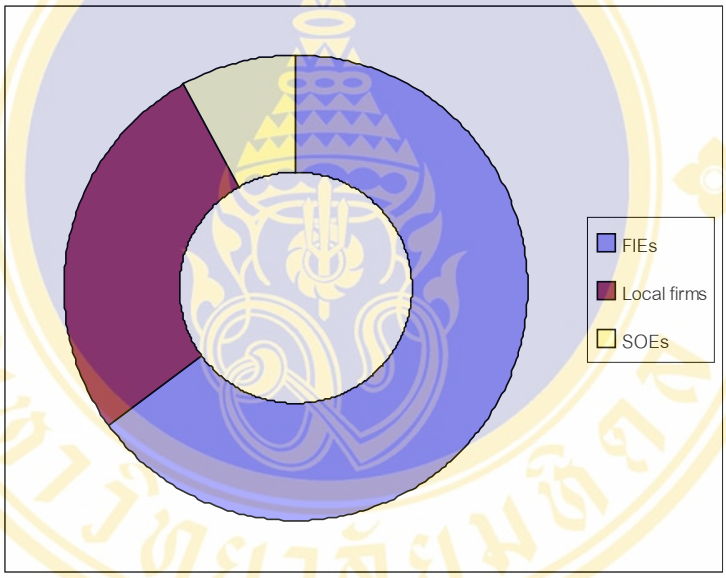

Figure 6: Strikes among enterprises of different sectors from 1995-2005

Violations of labour laws and regulations by employers are the main reason leading to the strike occurred so far in Vietnam and Ineffective operation or lack of representation by grassroots Trade Union (Only 29 percent of the enterprises occurring strike have Trade Union) are of the major causes leading to the illegal judgment of the strike since they all occurred inconsistent with the long and complicated procedure stated in labor laws though they all arise from the legitimate cause- the rights of the workers have been violated, which mostly are disputes over payment and social welfare.

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The role of Vietnam Trade Union is still weak in ensuring the right to strike of the workers. As the result, the number of strike has increased from year to year since "doi moi" According to the statistic of VGCL the total strike cases from 1995 to 2003 are 648 cases, in which there were 60 cases in 1995; in 2003 alone it increased by 119 cases. But no strike has been considered legal. This is because of the complication of procedure under laws, in which the strike occurred so far all have not complied with these procedures; moreover, limited UDR in private sectors as well as weak performance of Trade Union at grassroots level also account for a major reasons. As quoted by Li Qui, an international labor expert at Hanoi Consultation Workshop on the Labor Movement in Transitional Economies held in Hanoi, Vietnam on June 6-8, 2005:

> After two days discussion I feel confused. What is the role of Trade Unions in socialist countries? Next time I will stay at home. For example, strikes in Vietnam still do not grasp the exact situation. It seems to take long time to get permission to go on strike, so workers take strike anyway. So this means illegal strike. So my question is why bother with a union?

Hence, the rights of the workers under labor laws have not been protected by the competent authority bodies. This also implies the weak role of Vietnam Trade Union in involving in labor dispute settlement. Therefore, when the labor dispute occur the workers often do not come to the Trade Union but seek for other measures. Some TNCs operating in Vietnam has created their own system of settling labor dispute arising in their companies without the involvement of the Trade Union despite the neither cost of such services nor the existence of the Trade Union in their respective companies. For example,

> We have a Toll Free Call services from an independent company and hired by our company all over the world to deal with complaints from its staff. When a staff want to complain something regarding his work in the company he calls this Toll Free Call. Then the people in this service will investigate the issue and feedback to the relevant persons, including company manager to settle the issue.
>
> That is the way we often do regarding the complaints on our work in the company. We do not go to the Unionists because of the foregoing reasons that I mentioned and because they just focus on the social activities, contacting with

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other Trade Unions to organize social activities; and report their activities to Trade unions of upper level".

(Q. woman working as marketing specialist for a multinational company on energy industry with 100% foreign investment)

Most strikes broke out in southern provinces like HCM City, Binh Duong and Dong Nai, where industrial parks have attracted a large number of foreign investors. But the central and northern provinces, including Hanoi have witnessed labor unrest in recent years.

At Duc Giang garment company, though being seriously exploited there has been no strike occurred here and the workers also could not explain why. However, it can be explained mainly as first, it is an used to be SOEs, having a long standing. The working environment is safe and healthy with modern equipment as recognized by the workers; Second, the exploitation has been conducted very skillful. For instance, remuneration has been paid in time, adequate and transparent, including the additional working hour remuneration. (The exploitation of the employer on workers have been discussed in previous items). Third, there is Trade Union exists in the company, but they just focus on caring for the workers when they are sick, maternity leave, and other related activities such as organizing sport and entertaining activities. Other activities to protect the rights of the workers is considered not the business of the Trade Union. To make matter worse the workers have not been communicated the roles of the Trade Union. They do not know about the role of Trade Union other than these above mentioned activities, and also could not explain why. "I do not know why the Trade Union can not do other than the work they are doing at the moment. For example, regarding our low wage it is because our wages are calculated under the product we make, the price fix level for each product we produce lead to the low wage" (N. female worker at Duc Giang garment company). Hence, the feeling of acceptance has been created in the workers. When they could not stand that working environment anymore, the workers are the persons who leave the company in quite. "When we do not like to work for the company anymore, we just write the letter to unilaterally terminate the contract before 45 days, then the company will send us the left remuneration" (N. female worker at Duc Giang garment company).

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CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

In conclusion, this thesis argues that though workers' rights are affirmed in the laws and policies of Vietnam and that the Vietnam Trade Union is considered an important actor in protecting workers' rights under international labor standards such commitments have little been implemented in practice, especially in private sectors.

Policies of the State to encourage the FDI of TNCs to operate in Vietnam have not made much sense in terms of promoting workers' rights despite the increasing the FDI to Vietnam over time since the industries that the TNCs are focusing on mostly are "foot loose" industries. Of course, they have contributed to providing jobs for the Vietnamese workers. However, such jobs are mostly uncertain and the workers have to stop working when there are no orders from customers. Then they are not paid or only paid the minimum provided by law as discussed in chapter IV. This is very prevalent. In addition, there are low wages and poor working conditions; this is not much different to the local firms of private sectors. That is one of the reasons why strikes in FIEs account for a majority in Vietnam in recent years. The situation of the workers in other types of enterprises of the private sectors is not much different from FIEs in terms of their human rights being violated.

Of all rights, the right to work has been better implemented by both the Vietnam Government and the Trade Union, but the there has been a serious gap between the skilled workers and non-skilled workers because of the weakness of vocational training. Moreover, the training for workers from enterprise employers is a rare issue such as in the case of Duc Giang garment company. Like FIEs, the employment provided by local enterprises of private sectors is also not certain. In the context of economic globalization the competition between enterprises is very high; that has made the employers always seek measures to earn profit by increasing their competition capacity such as upgrading to advanced technology, streamlining the operation structures, reducing the production expenses, including by sacking the workers unilaterally as discussed earlier, and it is the low- skilled workers who always

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suffer from this situation. All of these have contributed to creating the gap in income between the skilled and unskilled workers, contributing to making the workers work additional hours frequently to reach the set targets since their wages mostly are determined by the products produced. It also makes the workers more vulnerable to losing jobs because of their involvement in some part of the modern production assembly system.

Low wages, generally, do not catch up with the rapid rise of the cost of living in urban areas. Poor housing and overloaded working hours and poor working conditions and uncertain employment, limited and weak existence of collective agreements; obstacles regarding the right to strike (complicated procedures to justify a legal strike) and weak enforcement of labor laws, weak monitoring by labor inspectors due to their limited representation, poor professional capacity and especially corruption, which is a serious problems in Vietnam[24], are the major causes of the human rights of the Vietnamese workers in private sectors being violated.

Protecting workers' rights, especially rights of the workers in private sectors is the major task of the Vietnam Trade Union in the context of a globalized Vietnam as a response to the shift of the workforce in Vietnam from the public sector to private sectors and the result of Vietnam's integration into the world Trade Union movement and international labor standards. However, the role of the Vietnam Trade Union at all levels in response to workers' rights, especially in private sectors remain very weak in terms of both limited representation and ineffective operation. Major causes for the weak response of Vietnam Trade Union to workers' rights are as follows:

i/ Existing dependence and inactive working manner of the Vietnam Trade Union compared with the CPV and the Government in running its task; Weak representation density of Trade Union at grassroots level together with the limitation of unionists compared with the tasks they performed;

ii/ Limited monitoring activities conducted by the Trade Union, especially at upper levels, on the compliance with laws and policies regarding workers' rights in private sectors instead of public sectors that have led to the widespread of violation of workers' rights.

[24] Vietnam ranked 100 out of 133 country in terms of high corruption as assessed by the global corruption survey

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iii/ Complicated operation mechanisms of the Vietnam Trade Union as mentioned in chapter III have affected the effectiveness of operations among Trade Unions of different types. For example, there is the current "weak cooperation between the National Industrial Unions and the Province level Unions in directing the Industrial Unions operating in their respective provinces" (VGCL 2005: 37) . In addition, there are the inadequate arrangements of staffing in Trade Unions at different levels. Recently the focus has shifted from the upper levels to lower levels. The VGCL claims this is to enhance the initiatives and activeness of the Unions at lower levels in response to the requirement of the new context. However, there is still the fact that the number of unionists at lower levels is much too small for their workload. For example, at district levels the unionist mostly are only one or two people.

iv/ Weak communication among the workers on the role of Trade Union. Hence, many workers still do not know about the significance of the existence of the Trade Union to protect their rights as well as the inflexibility in the working manner of the Unionists in persuading the workers;

v/ The poor method of establishing the Trade Union at grassroots levels and the misguided effort to to catch up with or even get over the set target for Trade Union membership. In many cases, this has violated the workers' right to join the Trade by their own consent and contributes to weakening the role of Trade Union in protecting workers' rights .

vi/ The existence of anti-union discrimination applied by the employers together with no detailed protection measure from the competent bodies against such discrimination are also among the major causes leading to the ineffectiveness of Trade Union at grassroots level in terms of protecting the rights of the workers.

5.2 Recommendations

The following are recommendations inferred from the research findings to enhance the role of the Vietnam Trade Union in protecting workers' rights, particularly in private sectors:

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At international level

It is recommended that international organizations, especially the ILO and international Trade Unions, should push up their intervention in areas such as technical assistance to promote human rights of the workers in Vietnam.

At national level

- Accelerate the independence of Trade Union in operation with other relevant agencies such as the CPV and the Government to push up the initiatives and effectiveness, the voice of Trade Union in performing its task and taking part in devising laws and policies to promote workers' rights.
- Simplify the operational mechanism of Vietnam Trade Union together with the reorganizing of unionists at different levels.
- Devise policies to protect unionists against anti-unionism from the employers.
- Strengthen the establishment of the Trade Union operating in private sectors together with the removal the concentration on qa8untity of members rather than quality in establishing Trade Unions at grassroots levels and Trade Union membership;
- Strengthen the monitoring activities on the compliance with laws regarding workers' rights in private sectors as well as having proper punishment for violations.
- Promote communication on the role of Trade Union, especially the workers' rights protection role and the benefits of joining the Trade Union for workers in private sectors
- Promote widely and enhance the quality of the communication on workers' rights such as the right to OSH, the right to collective bargaining, the right to a decent living and rest and working hours, etc.
- Train the unionists in professional background and working manner to suit the "doi moi" reforms. There also should be work to improve the role of Trade Union in protecting workers' rights.

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BIBLIOGRAPHY

Amnesty International. 2000. *Global trade, labour and human rights*. Centurion Press, London.

Asia Monitor Resource Centre. 2005. *Minutes of Hanoi Consultation Workshop on the Labour Movement in Transitional Economies.* AMRC, Hanoi.

Asian Development Bank. 2003. *Key indicators of developing Asian and Pacific countries*. ADB, Manilla.

Bhagwati, Jagdish. 2004. *In Defense of Globalization.* Oxford University Press, New Delhi.

Buergethal, Thomas, Dinah Shelton and David Stewart. 2002. *International Human Rights.* West Group, California.

Chinh, Quang. 2004. *Nha o cho Cong nhan cac Khu cong nghiep, Khu Che xuat: Can xac dinh ro trach nhiem (Housing for workers in Industrial Zones, Processing Zones: it is needed to identify the responsibility of competent bodies).* Labor Newspaper, Hanoi

Christian Conference of Asia Hong Kong. *Indochina: From Socialism to Market economy*. Clear-Cut Publishing, Hong Kong.

Collins, N., and Zhu, Y. 2003. "Viet nam Labor Policy reform." In Stephen Frost, ed. Omana

Communist Party of Vietnam. 1987. *Van kien Dai hoi VI Dang cong San Vietnam (Document of Congress VI of the Communist Party of Vietnam).* The Truth Publishing House, Hanoi

Communist Party of Vietnam. 1996. *Van kien Dai hoi VIII Dang cong San Vietnam (Document of Congress VIII of the Communist Party of Vietnam).* The Truth Publishing House, Hanoi

Communist Party of Vietnam. 2001. *Van kien Dai hoi IX Dang cong San Vietnam (Document of Congress IX of the Communist Party of Vietnam).* National Political Publishing House, Hanoi

Copyright by Mahidol University

Communist Party of Vietnam. 2001. *Strategy on socio-economic development 2001-2010.* CPV, Hanoi.

Duc, D.M. 2005. *Cty Kyungrhim Vina - TP. Ho Chi Minh: Duoi viec 40 CN khong chiu noi tang ca (Kyungrhim Vina company -HoChi Minh city: Sack 40 workers because of incapability to work of additional working hours).* Labor newspaper, Hanoi.

George and Ed Shepherd (eds*). Asia Pacific Labour Law Review: worker's rights for the new century*, AMRC, Hong Kong: .

Glossary of Terms Union Marixism. (2005). Available at http://www.marxists.org/glossary/terms/u/n.htm#union. Accessed February 5, 2005

Gordon, Michael E and Lowell Turner. 2000. *Transnational Cooperation among Labor Unions.* Cornell University Press, NY

Government of Vietnam. 2001. Decree No 71 on granting favorable condition for investment in building houses for sell and lease. *Labor Publishing House, Hanoi*

Hanoi Federation of Labor. 2004. Tai lieu boi duong can bo cong doan co so (Training kit for Trade Unionist at grassroots level). *Labor Publishing House, Hanoi*

Hoc, Khuc Tien. 2004. Lao dong va Viec lam nam 2004: Thuc trang, Giai phap va Vai tro cua Cong doan (Labor and Employment in 2004: Rationales, Solutions and role of Trade Union). *Labor & Trade Union Review, Hanoi*

Hornby, A. S. 2000. Oxford Advanced learner's Dictionary. *Oxford University Press.* UK.

Hung, Cao. 2004. Doi song Cong nhan o cac Khu cong nghiep, Khu Che xuat: Nguy co Thieu lanh manh ve tinh than (Life of workers in industrial zones, processing zones: Danger of lacking healthy spiritual life). *Labor Newspaper, Hanoi*

Hung, Ho Xuan. 2005. Co phan hoa doanh nghiep Nha nuoc, vuong mac va giai (equitizing SOEs: results, obstacles and resolutions). *Labor & Trade Union Review, Hanoi*

Institute of Economics. 1994. Vietnam's economic reform: result and problem. *Social science Publishing House, Hanoi.*

Copyright by Mahidol University

Institute of Worker and Trade Union. 2003. *Nang cao hieu qua hoat dong cong doan trong cac doanh nghiep co von dau tu nuoc ngoai (Enhancing the efficiency of Trade Union in foreign invested enterprises).* Labor Publishing House, Hanoi.

International Confederation of Free Trade Unions. 2001. *A Trade Union Guide to Globalization*. ICFTU, Belgium.

International Confederation of Free Trade Unions. 2005. *Trade & Labour Standards.* Available at http://www.icftu.org/focus.asp?Issue=trade&Language=EN. Accessed July 26, 2005

International Confederation of Free Trade Unions. 2005. *Trade Union Rights.* Available at: http://www.icftu.org/focus.asp?Issue=tur&Language=EN . Accessed July 30, 2005

Institute of Worker and Trade Union Movement. 2005. *Doi moi noi dung, Phuong thuc Lanh dao cua Dang doi voi Cong doan Vietnam Trong thoi ky moi (Reform contents and manner of leadership of the Party on Vietnam Trade Union in the new context).* Labor Publishing House, Hanoi.

International Labour Office. 1990. *Summaries of international labour standards.* ILO, Geneva

International Labour Office. 1964. *C122 Employment Policy Convention.* ILO, Geneva

International Labour Office. 1919. *C1 Hours of Work (Industry) Convention, 1919*. ILO, Geneva

International Labour Office. 1921. *C14 Weekly Rest (Industry) Convention, 1921*. ILO, Geneva

International Labour Office. 1935. *C47 Forty-Hour Week Convention, 1935*. ILO, Geneva

International Labour Office. 1936. *C52 Holidays with Pay Convention, 1936.* ILO, Geneva

International Labour Office. 1981. *C154 Collective Bargaining Convention, 1981.* ILO, Geneva

International Labour Office.1949.*C98 Right to Organise and Collective Bargaining Convention, 1949*. ILO, Geneva

Copyright by Mahidol University

International Labour Office. 1948. *C87 Freedom of Association and Protection of the Right to Organise Convention, 1948.* ILO, Geneva

International Labour Office. 1981. *C155 Occupational Safety and Health Convention, 1981*. ILO, Geneva

International Labour Office. 2002. *P155 Protocol of 2002 to the Occupational Safety and Health Convention, 1981.* ILO, Geneva

International Labour Office. 1970. *C131 Minimum Wage Fixing Convention, 1970*. ILO, Geneva

International Labour Office. 1981. *R163 Collective Bargaining Recommendation, 1981.* ILO, Geneva

International Labour Office. 1981. *R164 Occupational Safety and Health Recommendation, 1981.* ILO, Geneva

International Labour Office. 1962. *R116 Reduction of Hours of Work Recommendation, 1962.* ILO, Geneva

International Labour Organization. (nd). *Viet nam: Overview*. Available at http://www.un.org.vn/unag/ilo1/ilo.htm. Accessed on January 15, 2005.

International Labour Standards Department. 2004. *List of Ratifications of International Labour Conventions Viet nam.* Available at: http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byCtry.cfm Accessed on March 20, 2005

International Labour Organization. 2005. *Alphabetical list of ILO member countries*. Available at: http://www.ilo.org/public/english/standards/relm/country.htm. Accessed July 2, 2005.

Khanh, Hoang Thi. 1992. Hoat dong Cong doan trong giai doan moi (Operation of Trade Union in the new context). *Labor Publishing House, Hanoi*

Ly, Trinh Khanh. 2004. Vietnam Gia nhap WTO: Nhung tac dong toi Cong nhan, Lao dong nu va mot so Kien nghi (Vietnam accession to WTO: its impact to women workers and some recommendations). *Labor & Trade Union Review, Hanoi*

McLean, Iain. 1996. The Concise Dictionary of politics. *Oxford University Press, Oxford*

Copyright by Mahidol University

Minh, Dang Thuy.1999. *Cong doan bao ve loi ich cua cong nhan va lao dong (Trade Union protect interests of workers, and laborers).* Labor Publishing House, Hanoi.

Minister of Ministry of Labor, War Invalids and Social Affairs. 1999. *Decision No 708 on minimum wage level of Vietnamese workers in foreign invested enterprise.* MOLISA. Hanoi

National Assembly. 1990. *Trade Union law.* National Political Publishing House, Hanoi.

National Assembly. 1946. *Vietnam Constitution*. National Political Publishing House, Hanoi

National Assembly. 1959. *Vietnam Constitution*. National Political Publishing House, Hanoi

National Assembly. 1980. *Vietnam Constitution*. National Political Publishing House, Hanoi

National Assembly. 1992. *Vietnam Constitution.* National Political Publishing House, Hanoi.

National Assembly. 2002. *Labor Code*. National political Publishing House, Hanoi

National Assembly. 1957. *Trade Union law.* NA, Hanoi

National Assembly. 1990. *Trade Union law*. NA, Hanoi

Nghien, Van Hoang. 2003. *Impact of WTO accession on the socio-economic development strategy of Hanoi.* Available at: http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/viet-devhanoicity_nghien.pdf Accessed July 3, 2005

Nghien, Van Hoang. 2004. *Nha o cho Cong nhan cac Khu cong nghiep, Che xuat: Doanh nghiep Khong duoc dung ngoai cuoc (Housing for workers in Industrial zones, Processing zones: Enterprises must not stand out of the game).* Labor newspaper, Hanoi.

Office of the United Nations Residence Coordinatior Vietnam. 2003. *Briefing Report for Viet nam.* UNDP, Vietnam

Office of the Communist Party of Vietnam. 2005. *Thong tin chuyen de so 65: Thi truong Lao dong Vietnam (News No 65: Vietnam Labor market).* CPV, Hanoi

Copyright by Mahidol University

Petras, James and Veltmeyer, Henry. 2001. *Globalization Unmasked Imperialism in the 21st Century*. Madhyam Books, Delhi.

Prime Minister of Vietnam Government. 1994. *Decision No 465 - TTg issuing the regulation on the relationship between Government and Vietnam General Confederation of Labor*. Available at: www.congdoanvn.org.vn accessed July 1, 2005.

Sampat, Preeti 2003. *Economic Globalisation Today Resource book.* Action Aid. Bangalore.

Shapiro, Adam. 2004. The Global Compact Building on the leaders Summit. *United Nations, Geneva.*

Scherrer, Christoph, Greven, Thomas. 2001. *Global Rules for Trade.* Westfalisches Dampfboot, Munster.

Trade Union University. 1999. *Giao Trinh Ly luan & Nghiep vu Cong doan (Textbook on Trade Union philosophy & and Professional work).* Labor Publishing House, Hanoi.

United Nations. 1948. *Universal Declaration of Human rights, G.A.res.217A (III), UN. Doc A/810 at 71.*

United Nations. 1976. *International Covenant on Civil and Political Rights,*

G.A.res.2200 A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171.

United Nations. 1976. *International Covenant on Economic, Social and Cultural Rights*, *G.A.res.2200 A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S.3.*

United Nations. 1981. *Convention on the Elimination of All Forms of Discrimination against Women, GA.res.34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46.*

United Nations Development Programme. 2004. Human Report Development 2004. UNDP, New York.

United Nations Development Programme Vietnam. 2003. Available at: http:/www.undp.org/dpa/choices/2003/june/Vietnam.html. Accessed October 18, 2004.

Copyright by Mahidol University

U.S. Department of State. 2005. *Investment Climate Statement-Vietnam.* Available at: http://www.state.gov/e/eb/ifd/2005/42198.htm. Accessed July 2, 2005

Viet nam General Confederation of Labor. 2002. *Thuc thi Bo luat Lao dong doi voi Cong nhan nu tai Cac doanh nghiep Cong nghiep (Implementation of Labor Code on Women workers in industrial Enterprises).* VGCL, Hanoi.

Viet nam General Confederation of Labor. 2003. *Viet nam Trade Union Constitution.* Available at http:/www.congdoanvn.org.vn/ Accessed December 12, 2004.

Viet nam General Confederation of Labor. 2003. *Bao cao Tong ket Cong tac Bao ho Lao dong nam 2002 va Phuong huong nhiem vu Cong tac Bao ho nam 2003 cua cac cap cong doan (Report on the implementation of OSH activities of Trade Union at all levels in 2002 and orientation for 2003).* VGCL, Hanoi

Viet nam General Confederation of Labor. 2004. *Bao cao Tong ket Cong tac Bao ho Lao dong nam 2003 va Phuong huong nhiem vu Cong tac Bao ho nam 2004 cua cac cap cong doan (Report on the implementation of OSH activities of Trade Union at all levels in 2003 and orientation for 2004).* VGCL, Hanoi

Viet nam General Confederation of Labor. 2005. *Bao cao Tong ket Cong tac Bao ho Lao dong nam 2004 va Phuong huong nhiem vu Cong tac Bao ho nam 2005 cua cac cap cong doan (Report on the implementation of OSH activities of Trade Union at all levels in 2004 and orientation for 2005).* VGCL, Hanoi

Viet nam General Confederation of Labor. 2003. *Toan cau Hoa va Phong trao Cong doan Quoc te (Globalization and International Trade Union movement).* Labor Publishing House, Hanoi.

Vietnam General Confederation of Labour. 2004. *Tai lieu Nghien cuu Nghi quyet Dai hoi IX Cong doan Vietnam (Research documents on the Resolution of Congress IX of Vietnam Trade Union).* VGCL, Hanoi.

Vietnam General Confederation of Labour. 2005. *Van kien Hoi nghi Lan thu IV Ban chap hanh Tong Lien Doan Lao Dong Vietnam Session IX (Documentation of the Congress IV of the Executive Board of Vietnam General Confederation of Labour Session IX)*. VGCL, Hanoi

Vietnam Government. 2002. *Decree No 109/2002 directing the implementation of Labor Code on rest and working hours*. Public newspaper, Hanoi.

Copyright by Mahidol University

Vietnam Government. 2004. *Decree No 203/2004 on the minimum wage level of workers in state agencies, SOEs and local enterprises*. Public newspaper, Hanoi.

Vietnam Net. 2005.*Reader Feedback on working hours, rest and leisure time of workers in garment and textile in Hanoi.* Available at: www.vnn.vn. Accessed July 5, 2005.

Vinh, Le Quang. 2004. *Chung ta da quen xay dung thiet che van hoa. (We have forgotten the building of cultural institutions).* Labor Newspaper, Hanoi.

Vietnam News agency. 2004. *Govt to consider minimum wage raise.* VNS, Hanoi

Vietnam News agency. 2005. *Wage increases exceeding economic growth rates.* VNS, Hanoi

Vietnam News agency. 2005. *Experts warn of health and safety violations at Izs.* VNS, Hanoi

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APPENDIX

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APPENDIX A:
OVERVIEW OF INTERNATIONAL LABOR STANDARDS ON WORKERS' RIGHTS

1. The right to work

The right to work has been affirmed in various important documents of the United Nations (UDHR; ICESCR; the ILO No.122 Employment Policy Convention, 1964) as well as in documents of regional human rights mechanism such as European Social Charter, and has been localized in national labor laws of United Nations country members.

UDHR art. 23: "everyone has the right to work, to free choice of employment"

ICESCR art. 6.1: "The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right "

The States have obligation regarding the right to work include the obligation to respect, protect and fulfill each person's access to work, to earn a living, and the obligation to ensure that the work is done by the doer's consent. Such obligations include:

i/ providing vocational guidance and training programmes, which is possible for persons to access without any discrimination on the basis of gender, ethnic or national origin, religion, social status, etc.;

ii/ full employment. This means that these activities must be conducted to the maximum of resources available in the latest times. In the country following market economy such action means the states should promote the distribution volume of jobs available in the market to everyone who wish to work.

ICESCR art. 6.2: "The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment

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under conditions safeguarding fundamental political and economic freedoms to the individual."

2. The right to a decent living

The right to a decent living has been recognized in various documents of the UN with the aim to enable the worker and his family a decent living from the income generated from work.

UDHR art. 23.3:. "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection"

ECSCR Art. 7 item (ii) states the responsibility of the member states to "recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular a decent living for themselves and their families"

ILO Convention No 131 article 1 on minimum wage fixing states the obligation of the members states "to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate"; and that

ILO Convention No 131 article 3: such level of minimum wages must include

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

3. Rest, leisure and working hour

UDHR Article 24: "Every one has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

ICESCR Article 7 item (d): "the State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Rest, leisure and reasonable limitation of working

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hours and periodic holidays with pay, as well as remuneration for public holidays";

Typical Conventions and Recommendations of ILO on work hour and rest such as:

UDHR Article 24: "Every one has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay";

ICESCR Article 7 item (d): "the State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays";

Typical Conventions and Recommendations of ILO on work hour and rest such as:

Hours of work (Industry) Convention, 1919 (No1) Article 2 states "The working hours of a person employed in any public or private industrial undertaking or in any branch thereof hall not exceed eight in the day and forty-eight in the week"

Forty-Hour Week Convention, 1935 (No 47) and Reduction of Hours of Work Recommendation, 1962 (No116) Article 1:Each Member of the International Labour Organisation which ratifies this Convention declares its approval of:

a) the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence; and

b) the taking or facilitating of such measures as may be judged appropriate to secure his end; and undertakes to apply this principle to classes of employment in accordance with the detailed provision to be prescribed by such separate Conventions as are ratified by that Member .

Convention No 14 on Weekly rest, 1921 Article 2 item 1: "The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours";

Convention No 52 on Holidays with pay, 1936 Article 2 item 1 recognizes the annual leave of the workers: "Every person to whom this Convention applies shall be entitled after one year of continuous service to an annual holiday with pay of at least six working days"

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4. The right to safe and healthy working condition

UDHR Article 23: “Everyone has the right to just and favourable conditions of work”

ICESCR Article 7 item (b): “the State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Safe and healthy working conditions”.

CEDAW Article 11 item 1 (f): “State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”.

Some typical Conventions of ILO on the right to safe and healthy working condition:

Convention No 155 Occupational Safety and Health, and Recommendation (No 164), 1981;

Protocol of 2002 to the Occupational Safety and Health Convention, 1981: “Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment”. Article 4 item 1 of Convention 155

Article 5 of Convention 155 Occupational Safety and Health: “The policy referred to in Article 4 of this Convention shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment:

(a) design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes);

(b) relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of the workers;

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(c) training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;

(d) communication and co-operation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level;

(e) the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

Article 16 of Convention 155 Occupational Safety and Health:

1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far is reasonably practicable, risk of accidents or of adverse effects on health.

Article 18 Convention 155 Occupational Safety and Health: “Employers shall be required to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements”.

Article 19 Convention 155 Occupational Safety and Health states rights and obligations of the workers, their representatives and the employers regarding occupational safety and health:

There shall be arrangements at the level of the undertaking under which--

(a) workers, in the course of performing their work, co-operate in the fulfillment by their employer of the obligations placed upon him;

(b) representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health;

(c) representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health and

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may consult their representative organisations about such information provided they do not disclose commercial secrets;

(d) workers and their representatives in the undertaking are given appropriate training in occupational safety and health;

(e) workers or their representatives and, as the case may be, their representative organisations in an undertaking, in accordance with national law and practice, are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work; for this purpose technical advisers may, by mutual agreement, be brought in from outside the undertaking;

(f) a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health;

Article 6 of Protocol of 2002 to the Occupational Safety and Health Convention, 1981: "Each Member which ratifies this Protocol shall, based on the notifications and other available information, publish annually statistics that are compiled in such a way as to be representative of the country as a whole, concerning occupational accidents, occupational diseases and, as appropriate, dangerous occurrences and commuting accidents, as well as the analyses thereof".

Convention No 161 on Occupational Health services, and Recommendation (No 171), 1985. Article 3 item 1: " Each Member undertakes to develop progressively occupational health services for all workers, including those in the public sector and the members of production co-operatives, in all branches of economic activity and all undertakings. The provision made should be adequate and appropriate to the specific risks of the undertakings".

5. The right to organize and bargain collectively

UDHR Article 23 item 4: "everyone has the right to form and to join trade unions for the protection of his interests";

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ICESCR Article 8 item 1:

The State Parties to the present Covenant undertake to ensure:

(a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

ICCPR Article 22 item 1: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

Two major Conventions of ILO regarding the right to organize, which are considered two of eight core Conventions of ILO:

Convention No 87 on Freedom of Association and Protection of the Right to Organise, 1948,

Article 2 states: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”;

Article 4: “Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority”.

Article 11: “Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise”.

Right to Organise and Collective Bargaining Convention, 1949 (No 98) under article 1 item 1: “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”.

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Article 2 item 1: “Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration”.

Collective bargaining Convention No 154 and Recommendation No 163, 1981. Article 2: “For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations”; Article 5 “1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

6. The right to strike

ICESCR Article 8 item 1 (d) states: “The State Parties to the present Covenant undertake to ensure: the right to strike, provided that it is exercised in conformity with the laws of the particular country”. Unfortunately, until now there has been no regulation of ILO acknowledging the right to strike of the workers”.

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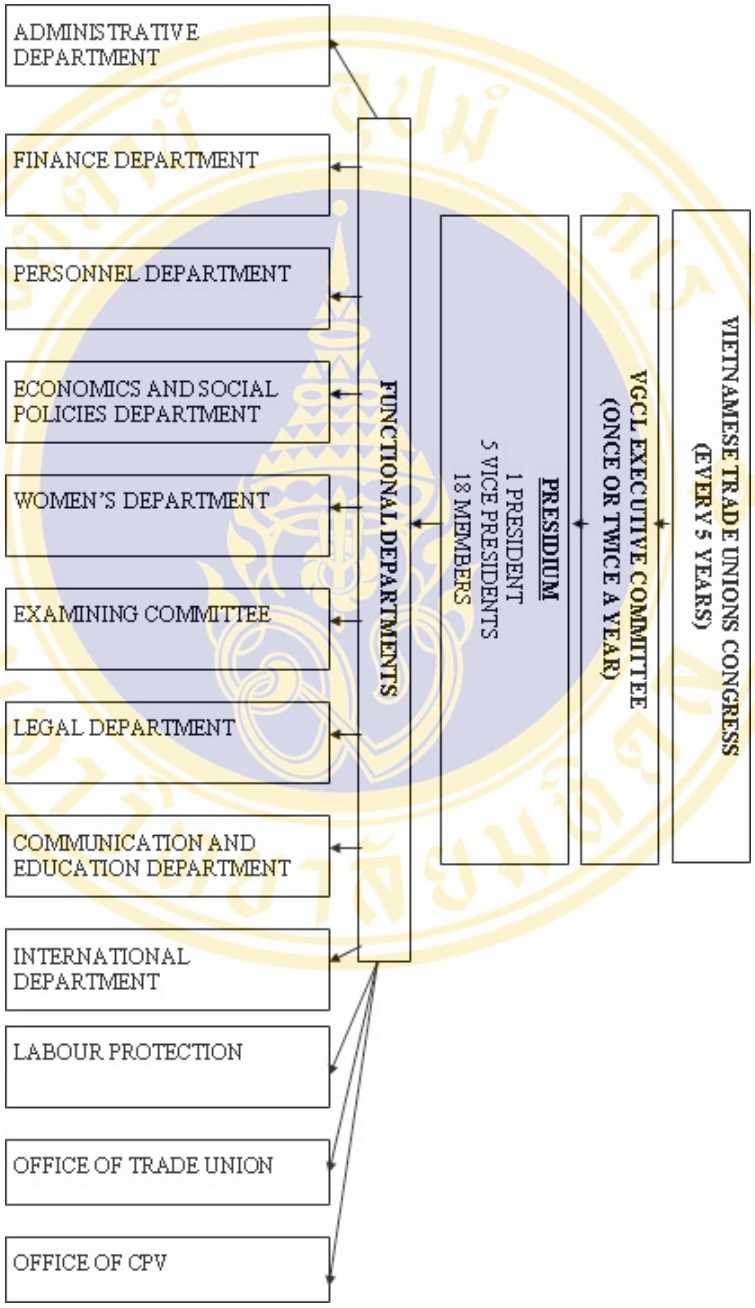
APPENDIX B:

I/ ORGANIZATION OF VIETNAM TRADE UNION AT CENTRAL LEVEL-VGCL



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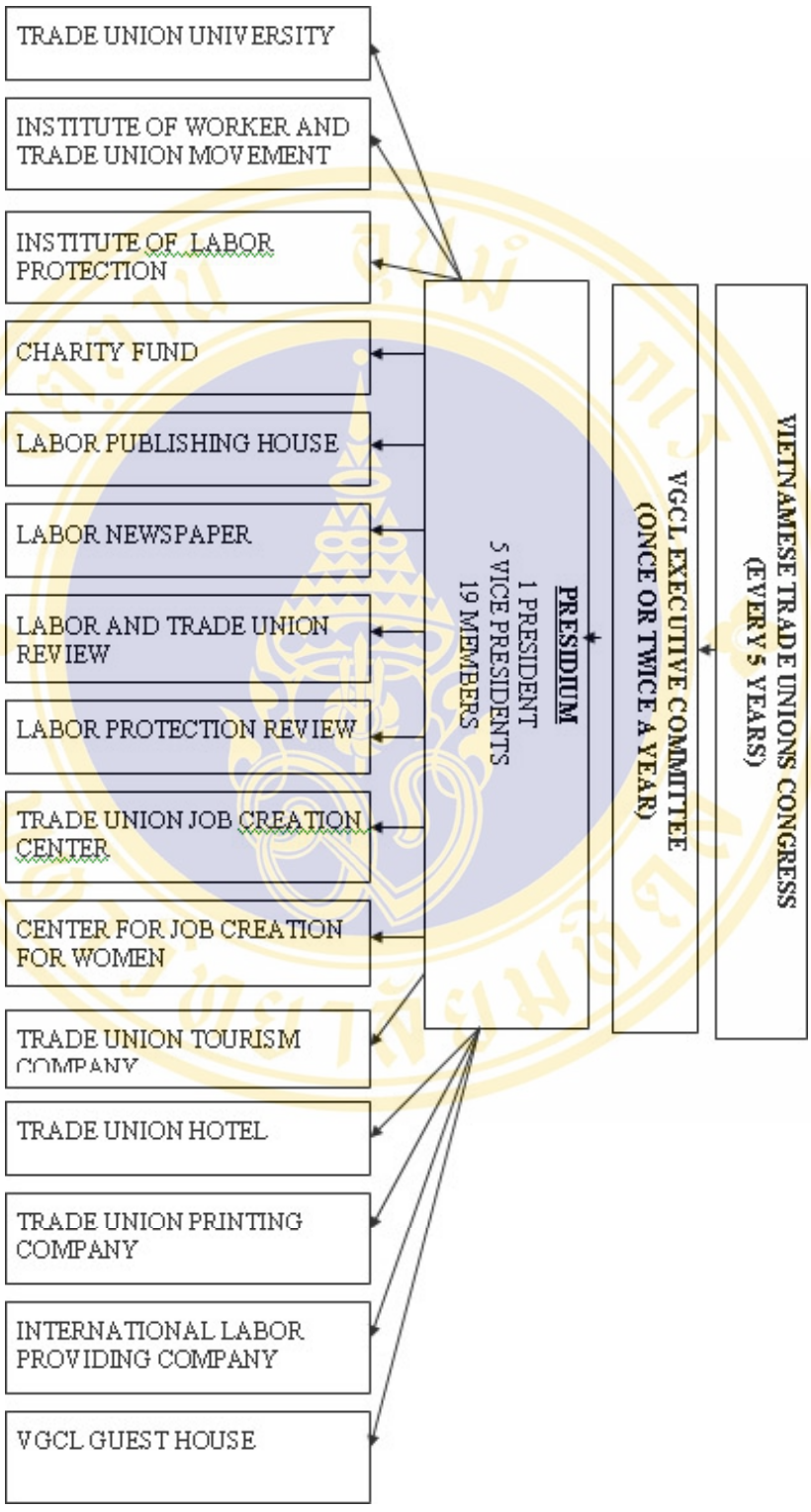
III/ UNITS UNDER DIRECT MANAGEMENT OF VGCL



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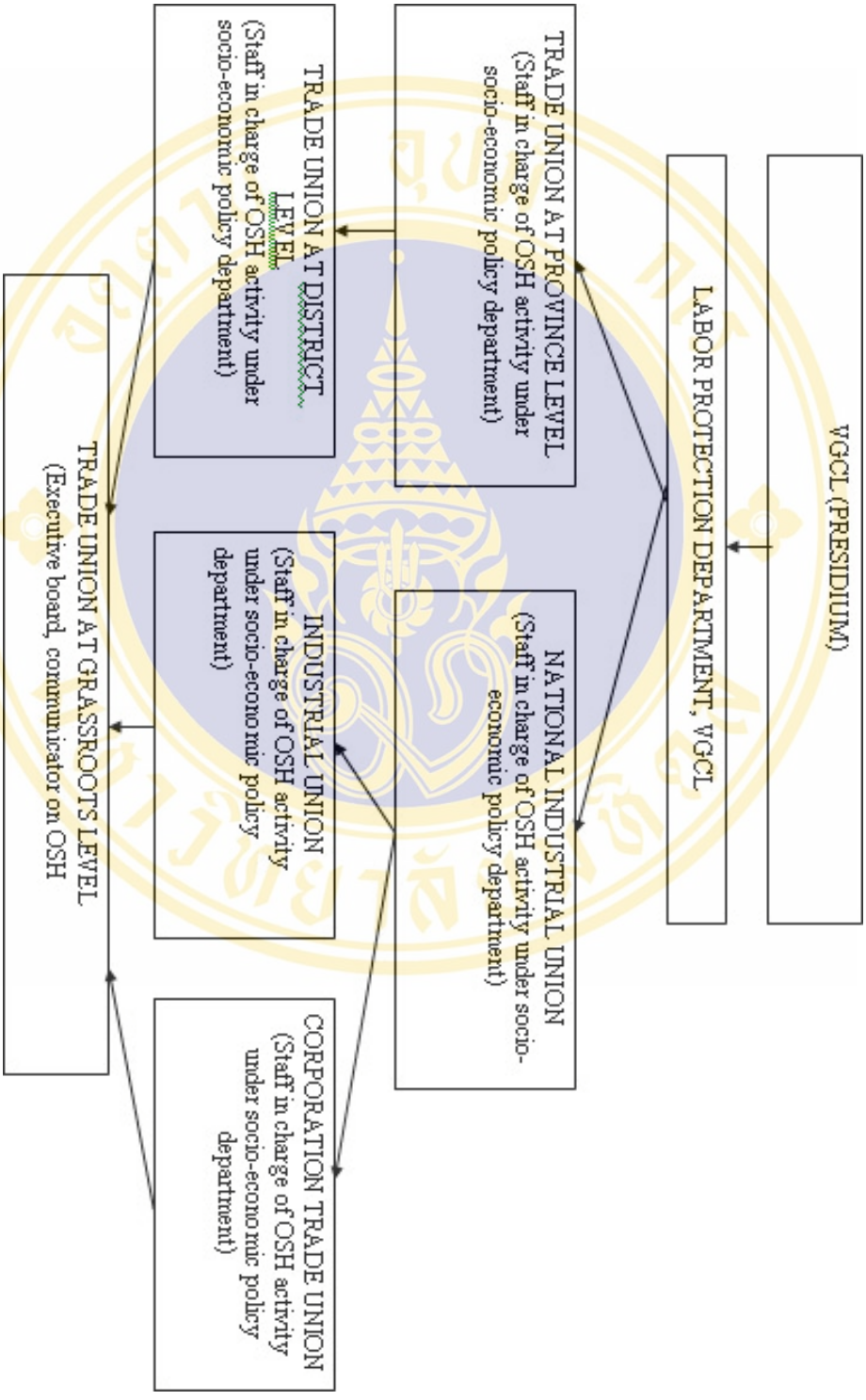
III/ ORGANIZATIONAL STRUCTURE ON OSH ACTIVITIES OF VIETNAM TRADE UNION



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APPENDIX C
INTERVIEW GUIDELINE

Union Officials

Question Guideline

1/ What is impact of Vietnam post "doi moi" on workers' rights? The protecting role of Trade Union?

2/ Is there any conflict between the preservation of Communist ideology related to Trade Union and the needs of integration of Trade Union in Vietnam in the globalized Trade Union movement in the world?

3/ What are the problems that the workers in the private sector are facing?

4/ What is the response of the Trade Union to promoting workers' rights?

5/ What are the major factors that enable the Trade Union in Vietnam well fulfil its role in protecting workers' rights?

6/ What is the role of Trade Union in Vietnam in implementing international standards?

7/ Can Trade Unions in Vietnam protect workers' rights better than Trade Union in other countries?

For workers

1/ What is your working hours? additional hours? Holiday?

2/ What is your wage monthly?

3/ What are the problems that workers in private sectors are facing?

4/ What are your comments on the role of Trade Union in your company?

- Work they have done to protect worker's rights?
- Manner of working of the Unionist at grassroots level?
- Whom you often go to when your labor rights are violated?

5/ What are your comments on the mechanism of Trade Union operation at the moment

6/ What do you think about the Trade Union at grassroots level?

7/ What causes the limitation in the operation of Trade Union (if any)

8/ What should be done to make the Trade Union work better in the private sector?

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